152 US 596

RECORD, CASE No. 14,177.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 197.

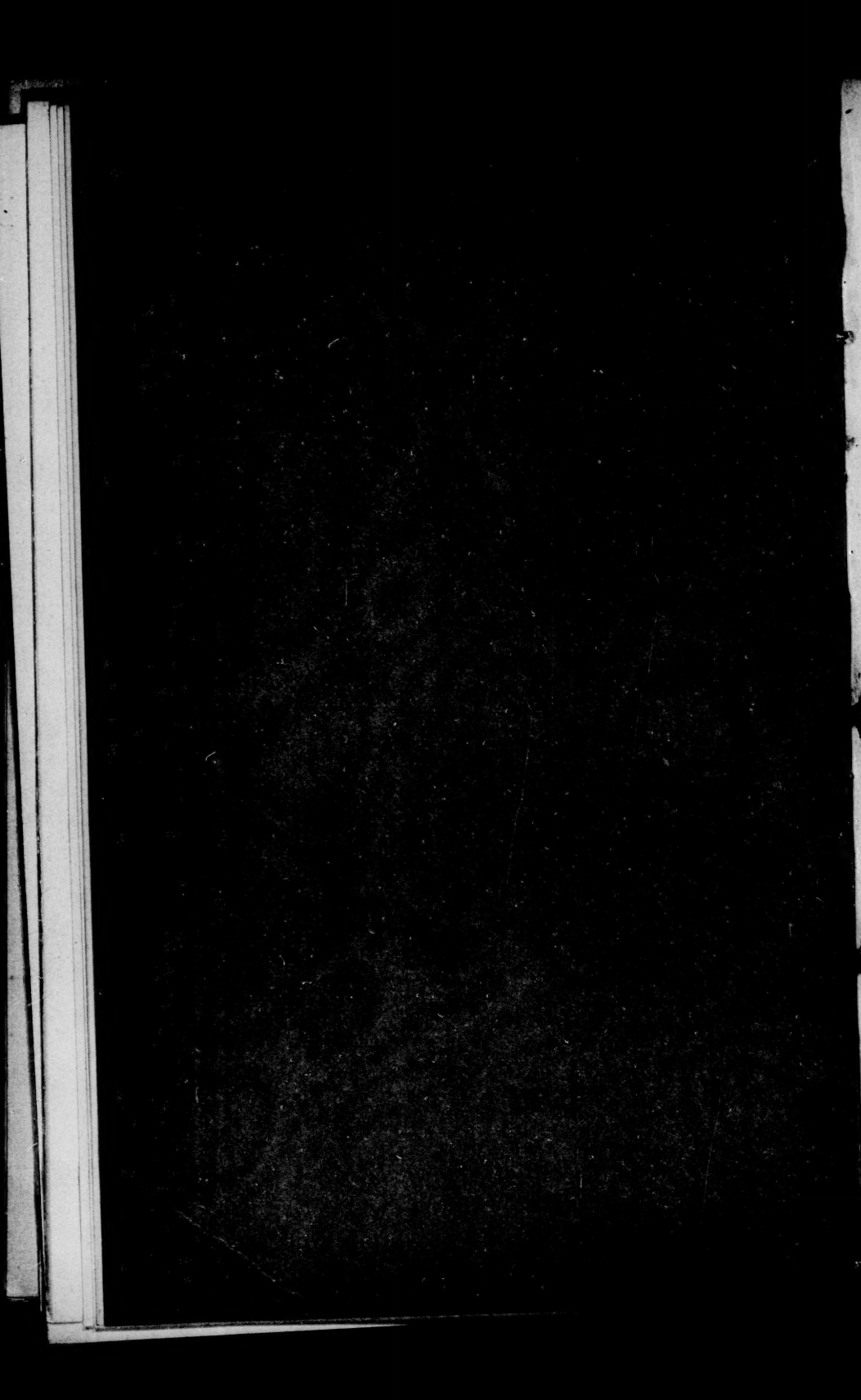
THE NORTH CHICAGO ROLLING MILL COMPANY, APPELLANT,

vs.

THE ST. LOUIS ORE AND STEEL COMPANY AND DAVID K. FERGUSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 26, 1890.



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a United States Circuit Court, Northern District of Illinois.

ROBERT M. OLYPHANT *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, THE Grand Tower and Carbondale Railroad Company, Rufus J. Lackland, Timothy B. Edgar, Henry Hitchcock, and The Farmers' Loan and Trust Company	In Chancery. Bill.
and	
THE NORTH CHICAGO ROLLING MILL COMPANY *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, ETHAN A. Hitchcock, Receiver; The Joliet Steel Company, The Iron Mountain Company, and David K. Ferguson.	Intervening Petition.

James C. Hutchins and George Willard, solicitors for North Chicago Rolling Mill Company, appellant.

Hutchinson and Luff, solicitors for appellees.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the eighteenth day of November, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

ROBERT M. OLYPHANT *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, THE Grand Tower and Carbondale Railroad Company, Rufus J. Lackland, Timothy B. Edgar, Henry Hitchcock, and The Farmers' Loan and Trust Company	In Chancery. Bill.
and	
THE NORTH CHICAGO ROLLING MILL COMPANY *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, ETHAN A. Hitchcock, Receiver; The Joliet Steel Company, The Iron Mountain Company, and David K. Ferguson.	Intervening Petition.

2 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-ninth day of September, 1884, came the complainant, by his solicitors, and filed in the office

of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs, bill of complaint, and exhibits in said entitled cause; which said bond, bill, and exhibits are in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

Circuit Court, July Term, A. D. 1884.

R. M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL CO. *et al.* } In Chancery.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and, in default of payment by the complainant of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him. Dated this 29th day of September, A. D. 1884.

WILLIAMS & THOMPSON.

(Endorsed:) Filed Sept. 29, A. D. 1884. Wm. H. Bradley, clerk.

3 *Bill.*

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT, Complainant,
vs.
THE ST. LOUIS ORE AND STEEL COMPANY, THE GRAND Tower and Carbondale Railroad Company, Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants. } In Equity.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

Robert M. Olyphant, residing in the city of New York, in the State of New York, complains and says that he is a citizen of said State of New York and respectively represents that on the 21st day of July, 1884, he filed in the circuit court of the United States for the eastern district of Missouri a certain bill of complaint, accompanied by certain exhibits made part thereof, in which your orator prayed for the appointment of a receiver to take within his charge and operate, preserve, and protect all the property of the St. Louis Ore and Steel Company and of the Grand Tower and Carbondale Railroad Company lying within the State of Missouri and
4 elsewhere; that said St. Louis Ore & Steel Company is the owner of a large amount of property and assets situated in

the State of Illinois as well as in the State of Missouri, a part of which is within the jurisdiction of this court. Your orator further represents that he filed bills of complaint in the circuit courts of the United States for the southern district of Illinois, the eastern district of Pennsylvania, the western district of Pennsylvania, praying the honorable judges of those courts to appoint a receiver of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company within the jurisdiction of said courts, and to take auxiliary jurisdiction with said circuit court for the eastern district of Missouri. Your orator files herewith a true copy of said original bill of complaint and the exhibits therewith so filed by your orator in the United States circuit court for the eastern district of Missouri and prays that your honors will take the same as part of this bill of complaint, your orator making all the averments and showing unto your honors all the same facts as are fully set forth in the bill filed as aforesaid.

Your orator avers that all the statements of said bill are true, as he is informed and verily believes, and your orator repeats the same herein, and also prays that all the exhibits accompanying said bill be also taken as a part of this bill of complaint.

5 Your orator further shows that on the 21st day of July, 1884, the bill filed as aforesaid was presented to the circuit court of the United States for the eastern district of Missouri, and upon motion of your orator Ethan A. Hitchcock was duly appointed by order of said court, made in said cause, provisional receiver of all the property of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company, and that said provisional receiver, as so appointed, executed a bond as required by said court, and said provisional receiver thereupon entered into the possession of all the property of said St. Louis Ore & Steel Company within the jurisdictions of said circuit court for the eastern district of Missouri.

Your orator further shows that on the 7th day of August, 1884, upon motion of your orator, said Ethan A. Hitchcock was, by order of said court made in said cause, duly appointed receiver of all the property of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company within the jurisdiction of said circuit court for the eastern district of Missouri and elsewhere, and as such receiver has filed his bond in the sum of three hundred thousand dollars, as required by said order of August 7th, 1884, which bond has been duly approved, and as such receiver is now seeking to reduce to his possession all the property of

6 the said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company in said States of Missouri, Pennsylvania, Illinois, and elsewhere, and, in order that said receiver may be fully empowered to discharge his duty as such, your orator prays your honors to take cognizance of this bill of complaint.

And your orator further shows that the United States circuit courts for the southern district of Illinois, the eastern district of Pennsylvania, and the western district of Pennsylvania have, upon

the motion of your orator, each of them appointed the said Ethan A. Hitchcock receiver as aforesaid, according to the prayers of the several ancillary bills filed by your orator in said courts as aforesaid.

And your orator further states upon information and belief that on said 21st day of July, 1884, or since that date, several suits by attachment and garnishment have been brought against said St. Louis Ore and Steel Company in Chicago and elsewhere in the northern district of Illinois, the names of the parties plaintiff and the amounts and character of the claims sued on being to your orator unknown; that by reason of such attachments the said receiver is greatly interfered with in performing his duties as such under the orders of the United States circuit court for said eastern district of Missouri.

Your orator further states that on the third day of July,
7 1884, R. M. Cherrie, doing business in Chicago, in the State of Illinois, and within this district, under the name and style of Cherrie & Co., was largely indebted to said St. Louis Ore & Steel Company; that on said last-named day said Cherrie made an assignment for the benefit of his creditors to one R. E. Jenkins, who is now administering the assets of said Cherrie & Co.; that on said 21st day of July, 1884, the North Chicago Rolling Mill, a corporation under the laws of the State of Illinois, doing business in the city of Chicago, within this district, was and still is largely indebted to said St. Louis Ore & Steel Company; that the amounts of money due and payable to said St. Louis Ore and Steel Company from the said estate of Cherrie & Co. and said North Chicago Rolling Mill have been attached and garnished, as your orator is informed and believes and therefore avers, at the instance of divers parties; that some of the claims upon which said attachments have been made are unjust and inequitable and are not legal demands against said St. Louis Ore and Steel Company.

Your orator further states that should said suits by attachment and garnishment be undefended great loss and injury will be sustained by all parties interested in the bonds and stocks of said St. Louis Ore and Steel Company.

And your orator prays that your honors will also appoint the said Ethan A. Hitchcock receiver of the property of the said St. Louis
Ore and Steel Company, and of the said Grand Tower and
8 Carbondale Railroad Company within the jurisdiction of this honorable court, in the same manner and to the same extent and with the same powers that are expressed in the orders of appointment so entered by the circuit court for the eastern district of Missouri as aforesaid.

And your orator files herewith copies of the orders of appointment so made by said last-mentioned court and all other orders thus far made by said court as a part of this bill of complaint, and your orator makes the same parties defendants in this case as are named defendants in said bill filed as aforesaid.

And your orator prays your honors to make such orders and decrees, preliminary and final, as are prayed for in said bill so filed

by your orator in the eastern district of Missouri, and that your honors also make all such other necessary orders, judgments, or decrees as may be required in aid of the said suit so commenced in the eastern district of Missouri.

Your orator prays your honors to take ancillary jurisdiction with said circuit court for the eastern district of Missouri, and to give to your orator all the relief which may be necessary in accomplishing the purposes of the filing of said bill and giving force and effect to such orders as have been or shall be made in said cause by the circuit court aforesaid of said eastern district of Missouri.

And your orator prays such other and further relief as may be necessary and to your honors may seem consistent with
9 equity and good conscience.

May it please your honors to grant your orator a writ of subpœna, to be directed to the said St. Louis Ore and Steel Company and the several other defendants hereinbefore mentioned, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honors in this honorable court, and then and there to answer (but not under oath) all and singular the matters aforesaid, and to stand to and abide and perform such other or further orders and decrees herein as to your honors shall seem meet. And your orator will ever pray, &c.

ROBERT M. OLYPHANT,
By his solicitor, EDMUND T. ALLEN.

WILLIAMS & THOMPSON AND
EDMUND T. ALLEN,
Solicitors for Plaintiff.

UNITED STATES OF AMERICA,
Eastern District of Missouri, City of St. Louis, } ss:

Edmund T. Allen, being duly sworn, says that he is the solicitor for Robert M. Olyphant, the complainant in the foregoing bill of complaint; that the said bill is true of his own knowledge except as to matters therein stated on information and belief, and as those matters he believes it to be true.

EDMUND T. ALLEN.

10 Subscribed and sworn to before me this 19th day of September, A. D. 1884.

[SEAL.] EDGAR L. MARSTON.

(Endorsed:) Filed Sept. 29, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the twenty-ninth day of September, 1884, there was filed in said clerk's office the original bill of complaint and orders of United States district court for the eastern district of Missouri in said entitled cause; which said bill and orders are in the words and figures following, to wit:

11 In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY, The Grand Tower and Carbondale Railroad Company, The Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants.
} No. 2391. In Equity.

Bill of Complaint.

To the honorable, the judges of the circuit court, of the United States for the eastern district of Missouri:

Robert M. Olyphant, residing in the city of New York, in the State of New York, and a citizen of said State of New York, brings this his bill against the St. Louis Ore and Steel Company, a corporation organized and existing under the laws of the State of Missouri, and having its chief office and place of business in the city of St. Louis, in said State of Missouri, in the eastern district aforesaid, which corporation is a citizen of said State of Missouri; the Grand Tower and Carbondale Railroad Company, a corporation organized under the laws of the State of Illinois, and a citizen of said
12 last-named State; Rufus J. Lackland, Timothy B. Edgar and Henry Hitchcock, citizens and residents of said State of Missouri; and the Farmers' Loan and Trust Company, a corporation organized under the laws of the State of New York, and a citizen of said last-named State.

And your orator complains and says that said St. Louis Ore and Steel Company is a manufacturing and business corporation organized and existing under, and pursuant to the laws of the State of Missouri, which for more than two years last past has been doing business in said State and elsewhere. That said corporation was formed on or about the seventh day of January, A. D. 1882, under and pursuant to the laws aforesaid, by the consolidation of two certain manufacturing and business corporations theretofore created and existing under the laws of said State of Missouri; namely, the Pilot Knob Iron Company, and the Vulcan Steel Company, by virtue of an agreement in writing entered into by and between said two corporations respectively constituting the articles of consolidation thereof, which agreement was duly authorized by the stockholders of the said Vulcan Steel Company, and the stockholders of the said Pilot Knob Iron Company, under the laws of said State of Missouri providing for the consolidation of manufacturing and business corporations, and all the requirements of said laws having been complied with, a certificate of consolidation and incorporation was issued to said St. Louis Ore and Steel Company, defendants herein, under date of January seventh, 1882.

And your orator further shows that under and by virtue of the laws of said State of Missouri said St. Louis Ore and Steel Company

by such consolidation succeeded to, and became the owner of all the assets and property, and assumed all the liabilities of said Vulcan Steel Company, and said Pilot Knob Iron Company respectively.

13 And your orator further shows that said Vulcan Steel Company was originally organized as a manufacturing corporation pursuant to the general laws of said State of Missouri, in May, 1870, under the corporate name of "Vulcan iron works;" which name was changed by proper proceedings under the laws of said State of Missouri to that of "Vulcan Steel Company," on the twenty-first day of January, 1880. That said corporation while known as the "Vulcan iron works," during and prior to the year 1875 owned valuable real estate in South St. Louis, or Carondelet, in said State of Missouri, upon which had been erected valuable improvements, consisting of buildings, furnaces and machinery for the manufacture of pig-iron, rails and other productions of iron. That on the 24th day of May, 1875, said corporation, under its then name of the Vulcan iron works, in order to procure additional capital wherewith to retire a bonded indebtedness then existing, erect a steel-rail mill, and to provide a working capital for the same, issued one thousand bonds for one thousand dollars each, due and payable on the 15th day of April, 1885, with semi-annual interest coupons payable on the 15th day of April and October, of each year, (at the rate of ten per centum per annum) at the National Bank of the Republic, of New York City. That the said bonds were so made and executed in pursuance of a resolution to that end duly adopted by the board of directors of said corporation, which said resolution is recited in the indenture of mortgage given by said corporation to secure said bonds as hereinafter set forth. That pursuant to said resolution said Vulcan iron works made, executed and delivered to defendants Rufus J. Lackland and Timothy B. Edgar, as trustees, and to the survivor of them, an indenture of mortgage on all of said real estate and improvements in South St. Louis in order to secure the principal and interest of said one thousand bonds of one thou-

14 sand dollars each, which said indenture of mortgage was dated May 24th, 1875, a true and correct copy whereof is herewith filed, marked Exhibit A, and your orator prays that the same may be taken as a part of this bill as fully as if incorporated into the body of it, and your orator refers to the said copy as showing the property embraced in and covered by said mortgage, and the terms, conditions and provisions thereof. That said mortgage was duly executed, acknowledged and recorded as required by law. That said bonds were negotiated for value, and were and are outstanding in the hands of divers parties as holders thereof, and constitute a debt of the "Vulcan iron works" afterwards the Vulcan Steel Company, which was assumed by The St. Louis Ore and Steel Company, defendant herein, in the amount of one million dollars, principal of said bonds.

And your orator further shows that in or about the year 1877, the said Vulcan iron works (afterwards the Vulcan Steel Company) being unable to meet its obligations in full, the holders of said bonds, by an agreement dated November 5th, 1877, reduced the in-

terest on said bonds from ten per cent. per annum to seven per cent. per annum. That from said last-named date the interest on said bonds has been at the rate of seven per cent. per annum. That all the interest coupons on said bonds which have matured up to and including April 15th, 1884, have been paid, so far as presented. That on the 15th day of October, 1884, there will mature on said bonds, coupons amounting to the sum of $35,000.00.

And your orator further shows that the authorized capital stock of said St. Louis Ore and Steel Company when formed by consolidation, as aforesaid, was fixed by the articles of consolidation at $5,000,000, divided into 50,000 shares of $100.00 each.

15 That at the date of said consolidation there was outstanding, of said Vulcan Steel Company, stock amounting to $1,154,000, in shares of $1,000.00 each, and scrip convertible into stock amounting to the sum of $7,875.46. That since said consolidation there have been issued of the shares of the said St. Louis Ore and Steel Company in exchange for the stock of the said Vulcan Steel Company in shares of $100.00 each ---------- $950,000 00
And for said scrip, convertible into stock in shares of like amount ---------- 4,900 00
And there remains outstanding of the stock of said Vulcan Steel Company, not yet exchanged for stock in said St. Louis Ore and Steel Company ---------- 204,000 00
And of said scrip convertible into stock the sum of -- 2,975 46

Making a total of ---------- $1,161,875 46

That at the date of said consolidation there was outstanding, stock of said Pilot Knob Iron Company, in shares of $100.00 each, amounting to the sum of - $1,427,900 00
That since said consolidation there have been issued of the shares of said St. Louis Ore and Steel Company in exchange for said stock of said Pilot Knob Iron Company, the sum of ---------- 1,309,100 00

At par. Leaving outstanding of stock of said Pilot Knob Iron Company, not yet exchanged for stock in said St. Louis Ore and Steel Company ---------- $118,800 00

That the total amount of stock of said St. Louis Ore and Steel Company issued, and to be issued in exchange for the stock

16 and scrip of said Vulcan Steel Company, and of said Pilot Knob Iron Company, is the sum of $2,634,875.46.

And your orator further shows that in addition to the stock issued and to be issued, as aforesaid, in exchange for the stock of said Vulcan Steel Company, and of said Pilot Knob Iron Company, the said St. Louis Ore and Steel Company issued 10,000 shares of its stock, full paid, to David Dows and Le Grand B. Cannon in payment for a large tract of land in Jackson county, State of Illinois, formerly owned by the Grand Tower Mining, Manufacturing and Transportation Company, that said land amounted to about 8,000 acres and contained large and valuable deposits of coal, and coal mines

already developed and in condition for working. That said coal lands were conveyed to said St. Louis Ore and Steel Company by deed of David Dows and wife and said Le Grand B. Cannon, dated March 25th, 1882, as part consideration for said issue of 10,000 shares of stock, and said St. Louis Ore and Steel Company was thereupon placed in possession of said lands and mines.

And your orator further shows that said Grand Tower Mining, Manufacturing and Transportation Company, a corporation formerly existing under the laws of the State of Illinois, had owned and operated, in connection with its coal mines, a railroad extending a distance of twenty-five miles from Grand Tower on the Mississippi river to Carbondale in said State of Illinois. That said railroad had theretofore been sold to said Dows and Cannon. That as part of the consideration of such issue of said 10,000 shares of stock by said St. Louis Ore and Steel Company, said Dows and Cannon conveyed said railroad, with its right of way and all appurtenances thereto belonging, to a railroad corporation duly organized under the laws of said State of Illinois, called the Grand Tower and Carbondale Railroad Com-
17 pany. That the capital stock of said railroad company was fixed at $50,000, and the certificates of such stock to said amount were issued full paid to the persons named as incorporators in the articles of the association thereof, and said certificates of stock in said railroad company were thereupon endorsed and delivered to said St. Louis Ore and Steel Company, and said railroad has been, and is now operated exclusively for the benefit or under the control of said last-named company. That the total amount of stock of said St. Louis Ore and Steel Company issued, and to be issued for the stock and scrip of said Vulcan Steel Company, and of said Pilot Knob Iron Company, and issued as aforesaid in payment for said coal lands and said railroad is the sum of $3,634,875.46, leaving unissued and unappropriated of said $5,000,000 of stock the sum of $1,365,124.54.

And your orator further shows that in or about the month of May, 1882, the said St. Louis Ore and Steel Company, defendant herein, was duly authorized by vote of the owners of a majority in interest in all its stock outstanding, upon due notice as required by the laws of the State of Missouri, to increase its bonded indebtedness by the issue of 1,000 bonds, each of the value of $1,000, to be secured by mortgage upon its real estate. That said bonds, pursuant to said authority, were duly issued and negotiated for value to sundry persons who are now holders of the same, and bear date May 3d, 1882, and mature May 1st, 1902, and bear interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each year. That pursuant to said authority, the said St. Louis Ore and Steel Company, defendants herein, made, executed and delivered to defendant, The Farmers' Loan and Trust Company, in the city of New York, as trustee to secure said bonds, a certain deed or indenture of trust and mortgage whereby it conveyed to the said Farmers' Loan and Trust Company, as trustee:

18 1. The real estate and the improvements thereon in Carondelet or South St. Louis, formerly owned by the Vulcan iron works, and being the same property conveyed by the mortgage of said Vulcan iron works, of date May 24th, 1875, as hereinbefore stated.

2. Divers tracts of land formerly belonging to the Pilot Knob Iron Company, situated in Jefferson, Madison, Iron and St. Francois counties, in Missouri, amounting in all to about 34,000 acres.

3. The said coal lands in Jackson county, Illinois.

That a true and correct copy of said mortgage, bearing date May 3d, 1882, is herewith filed, marked Exhibit B, and your orator prays that the same may be taken as a part of this bill of complaint as fully as if incorporated into the body of it, and your orator refers to the said copy as showing the property embraced in and covered by said mortgage, and the terms, conditions and provisions thereof. That said mortgage was duly executed and recorded according to law.

And your orator further shows that said mortgage, bearing date May 3d, 1882, constitutes a second mortgage upon said property in Carondelet or South St. Louis, and the improvements thereon, and contain a provision by which, in case the bonds secured by the mortgage bearing date May 24th, 1875, should not be paid off at maturity, but should be renewed, the holders thereof will be entitled to a renewal of the mortgage security thereof, which shall have precedence, so far as the property described in the mortgage of May 24th, 1875, is concerned, over the lien of the mortgage of May 3d, 1882. That all of the coupons upon said bonds bearing date May 3d, 1882, so far as the same have been presented for payment, have been paid.

19 And your orator further shows, that in 1883, in consequence of the great depression in the iron business, it became necessary for said St. Louis Ore and Steel Company to provide further capital to arrange for its floating debt. That for the purpose aforesaid, a meeting of the stockholders of said Grand Tower and Carbondale Railroad Company was held on the 22d day of September, 1883, at which meeting all the stockholders of said railroad company were present and unanimously adopted a resolution instructing the directors of the said railroad company to issue the bonds of said company to the amount of $600,000, and to secure the same by a first mortgage on said railroad, its buildings, franchises, plant, telegraph line, rolling stock, and other property. That pursuant to said resolution, the directors of said railroad company authorized, and on the 1st day of October, 1883, the officers of said railroad company made, executed and delivered a first mortgage of said railroad, whereby was conveyed to your orator, Robert M. Olyphant and Henry Hitchcock, of St. Louis, Mo., as trustees, and in trust, and to the survivor of them in said trust, all the estate, right, title, interest, claim and demand whatsoever, as well in law as in equity, of the said railroad company, in and to all and singular, its railroad, buildings, franchises, plant, telegraph lines, rolling stock, steamboats, barges, flats, and other property, which mortgage was

duly recorded in Jackson county, Illinois, and a true copy thereof is filed herewith as Exhibit "C," and your orator prays that the same may be taken as a part of this bill as fully as if incorporated into the body of it, and your orator refers to the said copy as showing the property embraced in and covered by said mortgage, and the terms, conditions and provisions thereof.

And your orator further shows, that said mortgage, by its
20 terms, secured 700 bonds dated October 1st, 1883, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of October and April in each year, maturing twenty years after date, principal and interest payable at the office of Drexel, Morgan and Company, in the city of New York. That 500 of said bonds are of the denomination of $1,000 each, and 200 of said bonds are of the denomination of $500 each.

And your orator further shows that the resolutions unanimously adopted by the stockholders and by the directors of the said railroad company in September, 1883, directed that the said railroad bonds, amounting to $600,000, should be delivered to said St. Louis Ore and Steel Company, to be used by it for the purposes of its business, provided that the said St. Louis Ore and Steel Company should guarantee the payment of said bonds and interest thereon. That by resolution of the directors of said St. Louis Ore and Steel Company, at their meeting held November 2d, 1883, the president of said St. Louis Ore and Steel Company was authorized to endorse such guaranty upon said railroad bonds, which was accordingly done. That thereafter at a special meeting of the shareholders of said St. Louis Ore and Steel Company, held at its chief office in St. Louis on March 11th, 1884, after due notice for more than sixty days previously as required by law, by a vote of the persons holding the larger amount of all the stock in said defendant corporation then outstanding, the action of the directors of said corporation in authorizing the guaranty by said corporation of said railroad bonds, and the action of the president of said corporation in executing such guaranty, were approved and ratified, and the directors of said St. Louis Ore and Steel Company were authorized and instructed to cause to be executed by said St. Louis Ore and Steel Company a mortgage upon such of its property in Missouri and Illinois
21 as they might deem expedient in order to further secure said railroad bonds and thereby facilitate their negotiations.

And your orator further shows that in pursuance of such authority and direction the said St. Louis Ore and Steel Company did make, execute and deliver to your orator, Robert M. Olyphant and Henry Hitchcock, as trustees, a second mortgage dated May 14, 1884, upon all the lands of said corporation in the counties of Jefferson, Madison, Iron and St. Francois, in the State of Missouri, and said lands in Jackson county, Illinois, above mentioned. That a true copy of said second mortgage is herewith filed, marked Exhibit "D," and your orator prays that the same may be taken as a part of this bill as fully as if incorporated into the body of it, and your orator refers to said copy as showing the property embraced in and

covered by said mortgage, and the terms, conditions and provisions thereof.

That said mortgage was duly executed and acknowledged as requested by law.

And your orator further shows that by the provisions of said second mortgage said St. Louis Ore and Steel Company guaranteed and undertook, in case of default by said Grand Tower and Carbondale Railroad Company in the payment of the interest coupons upon said $600,000 of bonds or the principal of the said bonds when due, to pay the same upon demand of the holders thereof; and agreed that in case default should be made in such payment by said St. Louis Ore and Steel Company, the trustees named in said mortgage or either of them, could enter upon and take possession of any and all of the lands in said second mortgage conveyed, and carry on mining and manufacturing operations thereon, and
22 to sell and dispose of the coal, ores, and other minerals taken therefrom. All of which by reference to said second mortgage, Exhibit "D," will more fully appear.

And your orator further shows that in or about the month of January, 1884, said St. Louis Ore and Steel Company was indebted to divers persons in an aggregate amount of about $500,000, and in order to provide for the same and to utilize said railroad bonds as security, therefore, the said railroad company executed its promissory notes dated January 15th, 1884, maturing twelve months from date, in all for the sum of $489,000, which notes were negotiated and sold, and of the said $600,000 of railroad bonds theretofore delivered to said St. Louis Ore and Steel Company, bonds amounting to $586,500 were pledged as collateral to secure the payment of said notes and the semi-annual interest thereon, which became due on the 15th day of July, 1884. That said notes are outstanding and the said $586,500 of railroad bonds are pledged as collateral to secure the payment of said notes and interest. That under the terms of said pledge, if said railroad company shall fail to pay the interest on said notes, or the principal thereof, when due, it is competent for the holders of said railroad bonds to sell the same for the purpose of paying said notes, interest and principal. That if said railroad company shall make default in payment of any installment of interest becoming due on said railroad bonds said St. Louis Ore and Steel Company will become directly liable as guarantor thereof, under the covenants contain*ing* in said second mortgage of May 1st, 1884, as by reference to Exhibit "D" herewith will fully appear.

And your orator further shows that the lands of said St. Louis Ore and Steel Company, situated in Jefferson, Madison, Iron and
23 St. Francois counties, in Missouri, are principally valuable for mining purposes. That the Pilot Knob Iron Company was formerly engaged in mining and selling iron ore therefrom, and that since the organization of the St. Louis Ore and Steel Company by the improvements made and machinery placed thereon, the output of iron ore therefrom has been very largely increased, and during the present year has reached an average quantity of 17,000 tons per month. That for this ore there is a large and in-

creasing demand by reason of the high reputation it has with the manufacturers in the United States, being especially valuable for mixing with other ores which carry a larger percentage of phosphorous. That said St. Louis Ore and Steel Company has been and is taking out and disposing of large quantities of coal from said lands in Jackson county in the State of Illinois, and has made contracts calling for the sale and delivery of large amounts of coal during the year 1884, from which sale and delivery of coal your orator is informed and believes a considerable profit may be realized applicable to the payment of taxes on said property and interest on said bonds.

And your orator further shows upon information and belief, that said St. Louis Ore and Steel Company, in carrying on its manufacturing business during the year 1883, and since January, 1884, has accumulated about 14,400 tons of pig-iron and about 2,600 tons of steel rails, of light weight, which pig-iron and steel rails there has been no opportunity to sell. That of said pig-iron and said steel rails, by far the greater part is under pledge as collateral to notes, discounted at various banks in the city of St. Louis, and to other parties, now amounting to about $270,000. That if said notes shall not be paid at maturity there is danger of great loss to said company, and the holders of said bonds, by the forced sale of said pig-iron and rails in the present depressed condition of the iron market.

24 And your orator further shows upon information and belief, that said St. Louis Ore and Steel Company has been, and still is, carrying on its iron-ore business, and has been, and still is, taking out large quantities of iron ore from said ore lands in Missouri, conveyed in said mortgages under date of May, 1882, and May, 1884, respectively. That said company in December, 1883, and since said date, has contracted to sell and deliver to sundry parties during the year 1884, a large amount of iron ore, to wit: About 175,000 tons. That of said ore there have already been delivered about 70,000 tons, leaving yet to be delivered over 100,000 tons. That said company has realized a considerable profit, over and above the cost of mining said ore, on the deliveries already made. That with increased monthly output now possible from improvements made at the mines, and increased price obtained for the ore in the later contracts, a still larger profit in mining and delivering said ore and such ore as can hereafter be sold may reasonably be expected. That it is not unreasonable to count upon a profit of from $70,000 to $80,000 from the mining and delivery of said 100,000 tons of ore not yet delivered.

And your orator further shows upon information and belief, that said St. Louis Ore and Steel Company has been, and still is, taking out and selling large quantities of coal from its said coal lands in Jackson county, Illinois, conveyed in said mortgages as hereinbefore stated. That said branch of its business has been, and now is, carried on at a profit, estimated for the year 1884 to amount to the sum of $25,000.

And your orator further shows upon information and belief, that

in November, 1883, said St. Louis Ore and Steel Company contracted to sell and deliver a large amount of steel rails during the
25 year 1884, viz: forty-two thousand tons, at thirty-eight dollars per ton, and thereafter, by reason of decline in the market of the price of steel rails said company was enabled to, and did contract with other steel mills to manufacture for and deliver to it, or on its order, said 42,000 tons of steel rails, at a price per ton which leaves a profit to said St. Louis Ore and Steel Company on said contracts. That one-half of said steel rails still remain to be delivered to said St. Louis Ore and Steel Company, and by it to its vendees. That the profit to said company by completing its contracts regarding said steel rails, as aforesaid, viz: by receiving and paying for and delivering to its vendées the rails not yet received and delivered under said contracts, will amount to not less than $35,000.

And your orator further shows, that if said pig-iron and steel rails, pledged as aforesaid, should be sold at forced sale, in the present depressed condition of the iron market, and if said contracts for the sale and delivery of iron ore should not be performed; and if the operation of said coal mines should not be continued; and if said contracts for the purchase and resale of said steel rails should not be complied with, there will be a resulting loss to the holders of the bonds hereinbefore mentioned, and to said company, as your orator is informed and believes, of not less than $150,000. That in case of such loss said company would have no source of revenue from which to pay its taxes for the current year, or the interest maturing upon the bonds secured by any of the mortgages hereinbefore mentioned.

And your orator further shows, upon information and belief, that by the recent assignment of Cherrie & Co., of Chicago, the moneys of said St. Louis Ore and Steel Company, to the amount of not less than $85,000, are for the present unavailable; that acceptances drawn on said Cherrie & Co., against funds in their
26 hands to meet them, by reason of said assignment, have been protested, and are daily being presented to said St. Louis Ore and Steel Company for payment; that in the present condition of the money market it is impossible for said company to provide for the payment of said acceptances; that said railroad company was not able to pay the interest on its notes above mentioned, amounting to $14,670, and which came due on the 15th day of July, 1884; that the railroad bonds pledged as collateral thereto may and probably will be sold under the terms of the pledges, and that the semi-annual interest on said railroad bonds to accrue on the first day of October, 1884, will amount to $21,000; that said railroad company is without means to pay the interest on said bonds, said railroad having been operated for the benefit of said St. Louis Ore and Steel Company, and its earnings being not more than sufficient to pay its current expenses; that by reason of the premises, there is great danger that the floating debt, being the unsecured notes and acceptances of said St. Louis Ore and Steel Company, will mature, without said company being able to provide for the same in an amount in all, as your orator is informed, of not less than $89,000; that the

holders of the various notes and other claims, for material, labor, wages, freight on ores and rails, amounting in all; as your orator is informed, to not less than $150,000, will bring suits in this and other States against said St. Louis Ore and Steel Company in order to secure the same; that the parties with whom said ore contracts and rail contracts have been made reside in other States, and from them divers sums are becoming constantly due to said St. Louis Ore and Steel Company, which sums are liable to be garnisheed in attachment suits against it in said other States, thereby preventing said St. Louis Ore and Steel Company from receiving its current income and revenue, and from providing for the payment either of its taxes, the interest on any of its bonds secured by said mortgages, or its floating debt.

27 That by reason of the premises, there is danger of a multiplicity of suits against said corporation in Missouri and elsewhere, and that judgments may be obtained upon which executions will be issued and levied upon the personal property of said St. Louis Ore and Steel Company, as well as the equity of redemption in the real estate secured by said mortgages, and that the same will be sold at a great sacrifice to all parties concerned; that said St. Louis Ore and Steel Company is under obligation to fulfill said contracts for ore, and in so doing is taking away large quantities of ore from said mortgaged lands, and is diminishing the security granted by said mortgages for said railroad bonds, and for the first-mortgage bonds secured by the said mortgage of May, 1882.

That the premises considered, there is danger that the security provided by said second mortgage for said railroad bonds will be diminished, and the assets of said Louis Ore and Steel Company, otherwise applicable to the payment, as well of its floating indebtness as of said interest on said railroad bonds, and the principal thereof will be wasted and diminished.

That it is for the interest, as well of the holders of said railroad bonds, as of the said St. Louis Ore and Steel Company, and its creditors generally, that the said ore contracts should be carried out, said coal mines operated, and that the profits accruing from said rail contracts should be realized, and not be wasted or lost.

That by the appointment of a receiver for the purpose of operating said ore and coal mines and thereby carrying out said contracts, and of keeping together the property of said St. Louis Ore and Steel Company, and of preventing the waste and loss likely

28 to accrue should said corporation be sued, and judgments be recovered against it, the interest of all parties will, in fact, be protected.

And your orator further shows that unless said line of railroad shall be operated, managed or controlled by a receiver, appointed by the court, there will be a multiplicity of suits and judgments against said railroad company, which will obstruct the operations thereof, and cause great loss to the holders of the bonds aforesaid, and a sacrifice of the property of the said railroad company.

And your orator further shows that no proceedings at law have been had, nor any suit or action commenced by or on behalf of

your orator, or of any holders of said railroad bonds so far as your orator has any knowledge, for any interest unpaid or accrued thereon.

And your orator futher shows, that Henry Hitchcock, the co-trustee of your orator, has notified your orator that he, the said Henry Hitchcock, declines and refuses to act as co-trustee under said mortgage of date May first, 1884, or to join with your orator in exercising any of the powers therein conferred upon said trustees by way of entering upon, or taking possession of lands in said mortgage mentioned; but that it is expressly provided in said mortgage that in the event of such refusal by either of said trustees the other trustee shall be, and is, clothed with all the powers in said mortgage declarred and conferred; whereupon said Henry Hitchcock is made defendant in this suit.

And your orator further shows that the said Rufus J. Lackland and Timothy B. Edgar have, or claim to have, interests in said mortgaged property under said mortgage deed dated May 24th, 1875, and your orator makes them defendants herein. That
29 the Farmers' Loan and Trust Company, a corporation organized under the laws of the State of New York, having its chief office and place of business in the city of New York has, or claims to have, interests in said mortgaged property under said mortgage deed dated May 3d, 1882, and your orator makes said Farmers' Loan and Trust Company a defendant herein.

Wherefore, and forasmuch as your orators are remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly recognizable and reviewable; and to the end therefore, that the said defendants may be required to make answer respectively to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here expressed, and they thereunto particularly interrogated, but not under oath, answers under oath being hereby expressly waived; that an account be had and taken of the bonds and coupons secured by said mortgage, dated May 1st, 1884, and the amount due thereon; that the names of the lawful holders thereof may be ascertained; that an account may be also taken of all the property of said St. Louis Ore and Steel Company, and of all the liens and encumbrances upon the same or any part thereof, and the priority thereof determined, that the several defendants may be required to state and set up their respective interests in said property of said St. Louis Ore and Steel Company; that the said property may be sold at a judicial sale thereof, free from the claims of all parties thereto, and from the claims of all persons whose interests are in any manner represented by any party hereto, under the judgment or decree of this honorable court, and upon such terms and conditions as to the court shall seem meet and proper; that each and all of said defendants and all persons in like situation with them or any of them, and all persons claiming
30 or to claim by, from or under them or any of them, from and by said sale be absolutely barred and foreclosed of and from all right and equity of redemption of, in, and to any and all of the property of said St. Louis Ore and Steel Company; that the said

judgment or decree may contain such provisions with respect to priority of liens, and the due application of the proceeds of sale according to the rights of the parties as may be just and equitable; that pending this suit a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all and singular the mortgaged property and premises, and the property, franchises, equitable interests, things in action, effects, moneys, receipts, bills, incomes, earnings, rights, privileges and immunities of said company connected with or relating to said mortgaged premises, and of all the rolling stock, machinery, equipment and other property incident to said railroad company; and that said receiver may be authorized and directed to maintain and operate said railroad, and to keep the same in proper repair, and to operate the said coal and ore mines, and to carry out, and perform said contracts for the delivery of coal and ore and purchase and sale of steel rails, and to receive, collect and preserve all property, assets and income of said St. Louis Ore and Steel Company, and that such other orders or directions *as* may be made in respect to said receivership as may be equitable and proper.

May it please your honor- to grant unto your orator a writ of subpœna to be directed to the said St. Louis Ore and Steel Company and the several other defendants hereinbefore mentioned, thereby commanding them and each of them, at a certain time and under a penalty therein to be named, to be and appear before your honors, in this honorable court, and then and there severally to answer all and singular the matters aforesaid (but not under oath) and
31 to stand to, abide and perform such other or further orders and decrees therein as to your honor- shall seem meet.

EDMUND T. ALLEN,
Solicitor for Complainant.
ROBERT M. OLYPHANT,
By EDMUND T. ALLEN.

UNITED STATES OF AMERICA, *District of Kansas,* } ss:

Edmund T. Allen being duly sworn, says that he is the solicitor for Robert M. Olyphant, the complainant in the foregoing bill of complaint; that the said bill is true of his own knowledge, except to matters therein stated on information and belief, and as to those matters he believes it to be true.

EDMUND T. ALLEN.

STATE OF KANSAS, LEAVENWORTH COUNTY, *City of Leavenworth,* } ss:

Subscribed and sworn to before me this 21st day of July, 1884.
My commission expires November 4th, 1885.
[SEAL.] JAMES McAULIFFE,
Notary Public.

32 EXHIBIT "A."

OFFICE OF RECORDER OF DEEDS,
THOS. F. FARRELLY, RECORDER,
CITY OF ST. LOUIS, MO.

This mortgage deed of trust made this twenty-fourth day of May, A. D. 1875, by and between the Vulcan iron works, a corporation created and organized under and by virtue of the laws of the State of Missouri, party of the first part, and Rufus J. Lackland and Timothy B. Edgar, of St. Louis, State of Missouri, parties of the second part, and Joseph Jones, of Philadelphia, State of Pennsylvania, party of the third part, witnesseth: Whereas the following resolutions were adopted as appear by the certificate of Daniel R. Garrison and Oliver L. Garrison, the president and secretary of said corporation, appended to this deed; and whereas, the following proceedings took place on the nineteenth day of May, A. D. 1875, in the city of St. Louis, at the usual place of meeting, at the office of the Vulcan iron works, (and of which due notice was given to each director) there was held a meeting of the directors of said corporation, (which was duly incorporated on the twenty-sixth day of August, A. D. 1870, under the provisions of chapter sixty-nine, of the General Statutes of the State of Missouri, and of an act of the General Assembly of said State amendatory thereof, entitled "An act amendatory of chapter sixty-nine concerning the incorporation and regulation of manufacturing and business companies," approved February 16, 1869, for the purpose and object of mining for coal and ores, for collecting and smelting ores, and to manufacture iron and steel, or other metals, in all their various qualities, forms, shapes and conditions, and to manufacture machinery of iron, steel, and other metals and materials and other purposes of mutual benefit and profit, as and may be connected with the said business
33 of mining, smelting and manufacturing in the county of St. Louis, State of Missouri, all of which is fully set out in a certificate in writing in which is stated the corporate name of said corporation, the objects for which formed, and all other legal requests), at which meeting, held as aforesaid, a majority of the directors of said corporation were present, and at which meeting the following resolution was adopted, to wit:

Resolution: Whereas, this corporation is desirous to raise funds to retire its existing bonded indebtedness and erect a steel-rail mill, and provide a working capital for the same; therefore, it is

Resolved, That the sum of one million dollars be borrowed by this corporation, for which its bonds shall be executed by its president and secretary, bearing date the twenty-fourth day of May, A. D. 1875, for one thousand dollars each, due and payable on the fifteenth day of April, 1885, and bearing ten per cent. per annum interest, payable on fifteenth day of April and October, of each year until maturity, for which interest coupons, bearing the lithographed signatures of the secretary, shall be attached to the bonds, which, when paid, are to be in full payment of interest to their maturity, on the

bond to which they belong, which bonds and coupons shall be payable to Joseph Jones, or bearer, at the National Bank of the Republic of New York city, in New York, and shall be secured by a deed of trust in the nature of a mortgage upon the land of this corporation and the buildings and improvements erected thereon, and occupied as a rail mill and furnaces in connection therewith, and also upon the machinery, apparatus, fixtures and appurtenances now and hereafter in or used in said buildings and premises in carrying on its said business, and which deed of trust shall also embrace and include, assign, and transfer the franchise and corporate
34 powers and rights and privileges of said corporation, it being intended that neither said corporation nor any of its individual stockholders, acting in any capacity or form whatever, nor any other person deriving title or claim from, or under it, or them, or any of them, shall conduct any business or transfer any right or to do any act contrary to the *bona fide* and corporate and exclusive transfer of said good will and business and property of said corporation, and all of the above property, rights, powers and privileges shall be duly transferred by this corporation, as fully as it has power to do, to Rufus J. Lackland and Timothy B. Edgar, of St. Louis, Mo., as trustees, by deed of trust in the nature of a mortgage, with power in the trustees, or either of them or the survivor of them, to sell all or any part of said property, rights and interests aforesaid for the payment of said indebtedness and incidental costs and interests thereon; in case of the non-payment of all or any of said bonds, or any interest accruing thereon, and in the case of the non-compliance by the corporation with any of the covenants and conditions in the mortgage deed of trust contained, and the mortgage deed of trust shall contain all provisions and conditions deemed expedient by the president of this corporation for the payment of taxes on said property, the keeping up and assignment of any amount of insurance and other matters relating to the form and substance of the security, including also covenants for the extension of the lien created by the mortgage deed of trust, to all machinery, apparatus, fixtures and appurtenances thereof, which may, from time to time, be placed in said building and connected with the said business and property, which deed of trust shall also contain a provision that the said corporation shall at all times, so long as there shall be no default in the payment of interest on said bonds, and no default in the payment of the principal thereof, have the full right to the actual possession, management and control of said property, so that it may
35 freely and without restraint use the same in the conduct and management of its business, and that nothing in said mortgage deed to be made shall interfere with the customary conduct of the business of said corporation, so long as the other conditions of said mortgage deed shall be fully complied with, and said corporation may, from time to time, according to the exigencies and interest of its business, alter, change, renew, sell and replace the aforesaid machinery, apparatus, fixtures and appurtenances according to the *bona fide* judgment of the corporation and its officers, in the usual and regular conduct and management of its business with the

covenant, and on the condition that all such changes and rights hereby reserved shall not be so made and exercised as substantially to diminish the security embraced in said deed of trust; and it is further

Resolved, That the proceedings and resolutions of this meeting shall be recited in said deed of trust, and thereupon shall enter into and become a part of the agreement and bargain between this corporation and the holders of said bonds to all intents and purposes, and said deed shall be made and accepted by all parties thereto, with such agreement and understanding; and, whereas, in pursuance of said resolution the bonds of said corporation have been executed as therein described, signed by D. R. Garrison, the president of the corporation, with the corporate seal affixed, and attested by O. L. Garrison, the secretary, with interest coupons attached thereto, bearing the lithographed signature of O. L. Garrison, said secretary, and which said bonds are due and payable on the fifteenth day of April, 1885, each of said bonds being for the sum of one thousand dollars, and being numbered from one to one thousand, inclusive, and the coupons for the interest on said bonds being due and payable, respectively, upon the fifteenth day of October and
36 April, of each year, until the maturity of said bonds, and each of said coupons being for the sum of fifty dollars, and in further pursuance of said resolution this mortgage deed of trust is executed.

Now, therefore, this deed witnesseth: that the said party of the first part, for the better security and more sure payment of the sums of money mentioned in said bonds, and each of them, with interest thereon, according to the true intent and meaning thereof, and also in consideration of one dollar paid to said party of the first part, by said parties of the second part, the receipt of which is hereby acknowledged by said party of the first part, doth by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, and to the survivor of them, and to the heirs and assigns of such survivor forever, the following-described real estate, together with all and singular the improvements thereon, and more particularly described as follows:

First. A tract of land being part of block No. seventy-eight (78), of the commons of Carondelet, survey No. three (3), west of the River des Peres, and containing six and $\frac{16}{100}$ acres of land, more or less, and is bounded north by Catalan street, east by Front street, south by Lorentz street and west by the center line of the Iron Mountain railroad, and being composed of lots Nos. one and two (1 and 2), of a subdivision of said block No. 78, by commissions appointed to divide the same in the partition case of Primus Emerson *vs.* R. C. M'Alister and others, in the St. Louis land court, also all the ground lying between said above six and $\frac{16}{100}$ acres and the Mississippi river.

Second. All that certain tract or parcel of ground lying and being in the commons of the city formerly town of Caron-
37 delet, north of River des Peres, containing nine arpents and $\frac{18}{100}$ of an arpent, more or less, and being lot number eighty-

seven (87), in survey No. three (3), as laid down and designated on the plat of the subdivision of said portion of the Carondelet commons, made under the direction of the board of trustees of said town of Carondelet by Zeno Mackay, and to be found recorded among the files in the said recorder's office of St. Louis county, to which said plat reference is hereby made for a more full and minute description of the tract of land aforesaid; also all the tools, machinery, implements, rights and privileges of which the said party of the first part is now the owner, or which may be placed upon said real estate above described, is the same acquired by said party of the first part from the Kingsland Iron Co. by deed dated July 8th, 1871; to have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, unto the said parties of the second part, and to the survivor of them forever; and the said party of the first part, does hereby covenant with the parties of the second part, and the survivor of them, for the use of the holders of said bonds, that all the machinery, apparatus, fixtures and appurtenances which it may, from time to time, before the payment of said bonds, erect or place within said buildings or have and use in connection with its aforesaid business, shall be held and considered as embraced within the provisions of this deed, and be subject to sale and disposition thereunder the same as though now existing there, and it is intended by this covenant to transfer title to such future property as the same may come into existence; on each of said bonds is a certificate signed by said trustees, Rufus J. Lackland and Timothy D. Edgar, attesting its genuineness: provided always, and these presents are upon the express condition that if said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them the principal sums of money therein mentioned according to the true
38 intent and meaning thereof, with interest thereon at the times and in the manner as hereinbefore provided, and all other sums of money herein provided to be paid in such case, then, and from thence forward, this indenture and the estate and interest hereby granted shall cease, determine and be utterly void, and this mortgage deed shall be duly released of record at the cost of said party of the first part; and, whereas, for the purpose of better securing said indebtedness, said party of the first part, does covenant and agree with the holders of said bonds and their assigns, that said property is now clear and free from all general and special taxes and liens, that the same have always been and hereafter shall be promptly paid, and in case there should be any taxes now in arrears, or in case there shall be any default in the punctual payment of the same, or of the payment and release of said liens at any time hereafter, the holders of said bonds, or any of them, at their option, may pay the same or redeem said property and all amounts so expended, and all other sums and amounts expended under the provisions of this deed, together with ten per cent. per annum interest on all such expenditures, shall become a debt, immediately due by the first party to the party or persons paying the same, additional to the indebtedness aforesaid, and secured in like manner by

this deed, for which said property may be sold as below provided, and also to keep the buildings on said real estate, together with the machinery, fixtures and appurtenances therein insured in a sum not less than two hundred and fifty thousand dollars, until said bonds be paid, in a company or companies satisfactory to the parties of the second part, the policy or policies to be assigned or made payable to the parties of the second part, and the money collected thereon in case of fire to be held as collateral security for said bonds and applied in payment of the rebuilding and replacing of said buildings, machinery, fixtures and appurtenances, if any of
39 such insurance be not kept up the holder of any of said bonds, or any of said trustees may, from time to time, pay the necessary premium therefor, and all sums so paid shall be held secured by this deed, for the repayment of which and ten per cent. per annum interest thereon, said property may be sold as below provided, and it is agreed that all money received by the trustees for insurance shall be by them deposited at the Mechanics' bank or other bank in St. Louis, Mo., and shall be paid out towards the rebuilding of said premises and the erection and replacing of said machinery, etc., *pro rata* as the same shall be rebuilt and replaced, in sums according to their *bona fide* judgment and discretion, and in all such matters the trustees shall act jointly, according to their best judgment and discretion, and all expenses incurred by the trustees, or either of them, and all labor and services reasonably performed by or for them in any way connected with said insurance, or the collection thereof, shall be considered as part of the expenses of this trust, and shall be secured by this mortgage deed of trust and shall be a debt immediately due by the party of the first part, in favor of the trustees or any one to whom they may direct the amount to be paid, but it shall be the duty of the party of the first part to pay all the expenses and perform all the labor incident to the taking out and keeping up of said insurance, and in collecting the same in case of loss and employing counsel and prosecuting suits for the collection of any insurance; all legal costs and other expenses which the trustees or either of them may incur in connection with any proceedings concerning said insurance shall be a debt due them or him by the corporation, and also shall be secured by this deed, and shall stand preferred before the said bonds in way of payment, and the corporation shall be primarily liable therefor. A failure by said first party to comply with any of the provisions of this deed shall, at the option of the holders of a major part of said bonds,
40 authorize a sale under this deed as if said bonds were immediately due; it is agreed that if the interest upon said bonds or any part thereof shall become due and remain unpaid for thirty days after the maturity thereof, then by reason of such default the said bonds, at the option of the holders of the major part thereof, shall forthwith become due and payable, notwithstanding said bonds may not appear on their face to be due, for the purpose of authorizing a sale under this deed to raise money to pay the same; and it is hereby covenanted and agreed that whenever there may be occasion to sell said property for any purpose as in this deed provided,

then both of said parties of the second part or either of them, or the survivor of them, shall have full power and authority to act in the premises in person, and any sale or other act done by them, or either of them, or the survivor of them, shall be effectual to pass the title to said property in fee simple as though both of them joined therein, and any deed of conveyance of said property made by either of them, or by the survivor of them, in execution of said trust shall be as valid and effectual as though the same was done by both of them, and in case of any sale by either of them, or by the survivor of them, all statements and recitals in relation to the sale and execution of the conditions of this mortgage deed in every deed of conveyance of said property by them, or either of them, or the survivor of them executed, shall in all courts of justice be held to be *prima facie* true. Now in case any of said bonds or any installment of interest or any interest coupon shall remain unpaid for thirty days after it is due, or if any of the foregoing stipulations or covenants be not performed and complied with, or if any sum of money which may be advanced as above named be not immediately refunded to the person or persons advancing the same after demand therefor, in any such event said parties of the second part, or either of them, or the survivor of them, at the request of the
41 holders of the major part of said bonds, shall proceed to sell said property or any part thereof at the front door of the court-house, in the city and county of St. Louis and State of Missouri, for cash, first having given forty days' notice of the time, terms and place of sale and of the property to be sold by advertisement in one or more newspapers published in the English language, in the city of St. Louis, and upon such sale shall execute a deed or deeds in fee simple for the property sold to the purchaser or purchasers thereof and receive the proceeds of such sale, and out of the proceeds of such sale pay, first, the costs and expenses of executing the powers and trusts hereinbefore set forth, and next they shall repay to any person who may have advanced or paid any money for taxes or insurance or other purposes as herein provided all sums so by him or them advanced and not already paid, with ten per cent. per annum interest thereon from date of such advance, and next, pay the principal of said bonds whether due or not and the interest remaining due and unpaid on said bonds to the day of sale, together with the current rate of exchange thereon at the date of sale, upon the city of New York, and the remainder of such proceeds, if any shall be paid to the said party of the first part; the trustees or either of them, or the survivor of them, making the sale shall deposit the proceeds in bank, and the same shall be paid out upon the check of such trustees or either of them, or the survivor of them, making the sale in payment of the costs, debt, and other matters as hereinbefore provided, and the Mechanics' bank or any other bank selected by the trustees or trustee whose act shall be considered a suitable depository of any money received by them or him under any of their powers in this deed, said bonds shall be upon an equal footing and in case of sale of said property they shall be paid *pro rata* together with the interest thereon in case of deficiency of

money to pay all in full, and the said parties of the second
42 part hereby covenant and agree that they will perform and fulfill faithfully the conditions and trusts hereby created, and in all respects carry out the provisions of this deed and perform all the obligations on their part to be performed according to the true intent and meaning of these presents.

In witness whereof the said corporation, the Vulcan iron works has caused these presents to be signed by its president and attested by its secretary and its corporate seal to be hereto affixed and said parties of the second part have hereto set their hands and seals this twenty-fourth day of May, 1875.

[Copy of Seal Vulcan Iron Works, St. Louis, Mo.]

DAN'L R. GARRISON, *President.* [SEAL.]
OLIVER L. GARRISON, *Sec'y.* [SEAL.]
RUFUS J. LACKLAND, *Trustee.* [SEAL.]
TIMOTHY B. EDGAR, *Trustee.* [SEAL.]

We, the undersigned president and secretary of the Vulcan iron works, certify that the resolution set forth in above and foregoing mortgage deed of trust was unanimously passed at a meeting of the directors of said corporation held at their office in St. Louis, Mo., on the 19th day of May, 1875, and at which meeting a full quorum was present.

DANIEL R. GARRISON, *President.* [SEAL.]
OLIVER L. GARRISON, *Secretary.* [SEAL.]

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Be it remembered that on this twenty-fourth (24) day of May, A. D. 1875, before me, the undersigned, a notary public in and for said county and State, came Daniel R. Garrison, president, Oliver L. Garrison, secretary of the Vulcan iron works, a corporation
43 duly created and organized under the laws of the State of Missouri, and Rufus J. Lackland and Timothy B. Edgar, trustees, who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Daniel R. Garrison and said Oliver L. Garrison, who are known to me to be the president and secretary of said Vulcan iron works, acknowledged the same to be the act and deed of said Vulcan iron works for the purposes therein mentioned, and the said Oliver L. Garrison further acknowledged that the seal affixed to said instrument of writing was the seal of the Vulcan iron works and that he was duly authorized to affix the same to said instrument of writing for the purposes mentioned in said deed. I certify that I duly qualified as notary public, March 17th, 1874, and my commission expires February 6th, 1878.

In witness whereof I have hereto set my hand and affixed my

notarial seal, at office in St. Louis, this the twenty-fourth day of May, 1875.

[Copy of Seal Foster T. Martin, Notary Public, St. Louis, Mo.]

FOSTER T. MARTIN,
Notary Public, St. Louis County, Mo.

Filed and recorded March 22d, 1876, at 12.35 p. m.
D. H. McADAM, *Recorder.*

NOTE.—The words "fourth," on line 38, page 142, "purpose," on line 19, page 144; "both," on lines 6 and 10, "either," on line 9, part of the word "unpaid," on line 26, page 145 of this record are written on erasures, and "unanimously," on line 43, same page of same is interlined in the original deed.

44 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned recorder of deeds, certify that the foregoing is a true copy of an instrument of writing executed by the Vulcan iron works to Joseph Jones, trustee, together with the acknowledgment and date of filing and recording thereof as fully as the same remains in my office in Book No. 545, page 142.

Copy of Seal Recorder of Deeds, St. Louis, State of Missouri.

Witness my hand and official seal this 28th day of November, 1883.

THO. F. FARRELLY, *Recorder.*

45 EXHIBIT "B."

This indenture, made and entered into on this third day of May, in the year of our Lord, eighteen hundred and eighty-two, by and between the St. Louis Ore and Steel Company, a manufacturing and business corporation organized and existing under the laws of the State of Missouri (hereinafter designated as the steel company) party of first part and the Farmers' Loan and Trust Company, a corporation doing business in the city of New York, and State of New York, organized under the laws of said State (hereinafter called the trust company) trustee, and hereinafter-mentioned party of the second part, witnesseth:

Whereas, the said steel company, for the purpose of providing additional working capital and improving its plant, has determined to increase its bonded indebtedness by issuing one million dollars of its bonds under date of May 3d, 1882, payable on the first day of May, A. D., 1902, bearing semi-annual interest at seven per cent. per annum from May 1st, 1882, till maturity of said bonds, and secured by mortgage upon the ore and coal lands and other property of said company in Missouri and Illinois, for which increase of the bonded indebtedness of said company the consent of the persons holding the larger amount in value of the capital stock of said corporation has been obtained and said issue of bonds has been

authorized according to law, in the manner following, that is to say:

At a meeting of the board of directors of said steel company, held on due notice, in said city of St. Louis, Missouri, on the twenty-sixth day of February, A. D. 1882, a quorum being present, a resolution was unanimously adopted by said directors ordering that a special meeting of all the shareholders of said corporation be called; to be held at nine o'clock in the forenoon of Wednesday, the
46 third day of May, A. D. 1882, at the chief office of said company, number 409 North Sixth street, in the city of St. Louis, State of Missouri, for the purpose of considering and determining certain matters in said resolution specified, and among others, a proposition to be submitted at said meeting, authorizing an increase of the bonded indebtedness of said corporation to the amount of one million dollars, the same to be secured; all which, reference being had to the record of said directors' meeting, will more fully appear:

Pursuant to which resolution more than sixty days' notice of the time and place aforesaid of such meeting of stockholders and of the amount of the proposed increase of bonded indebtedness of said company was given according to law, that is to say, first, by publishing in the St. Louis Post-Dispatch, a newspaper published in said city of St. Louis, Missouri, once a week for ten (10) successive weeks, an advertisement signed by the president and a majority of the directors of said corporation, wherein notice was given that a meeting of all the stockholders of said corporation would be held at nine o'clok in the forenoon of Wednesday, the third day of May, A. D. 1882, at the chief office of said company aforesaid, and that said meeting was called for the purpose of determining and considering the several matters in said notice, mentioned the said proposition to authorize an increase of the bonded indebtedness of the said corporation to the amount of one million dollars, the same to be secured, being one of the said matters therein set forth, which advertisement was first published in said St. Louis Post-Dispatch, on Monday, the twenty-seventh day of February, A. D. 1882, and was thereafter published in said newspaper on each successive Monday for nine (9) weeks next following, the last insertion being on Monday, the first day of May, A. D. 1882.

47 And in addition to said notice by publication, as aforesaid, like notice of said stockholders' meeting was given by mail to each stockholder of said corporation, and also to each person then appearing from the books and corporate records of the Vulcan Steel Company and of the Pilot Knob Iron Company (by the consolidation of which two corporations the St. Louis Iron and Steel Company was formed) to be the holder of any share, or shares, of stock in said companies respectively, namely, by depositing a written and printed copy of said notice and advertisement in the post office, at the city of St. Louis, Missouri, postage prepaid, addressed to each of the stockholders and persons aforesaid, at his usual place of residence, more than sixty days previous to said third day of May, 1882, in and by which, said printed and written notice, so sent by mail as aforesaid,

was in like manner specified the objects of said stockholders' meeting, the time and place aforesaid, when and where said meeting was called to be held, and among other things to be considered thereat, was specified the proposed increase of the bonded indebtedness of said steel company to the amount of one million dollars.

And afterwards, to wit: on Wednesday, the third day of May, A. D. 1882, in pursuance of the notice aforesaid, there was convened and held, at the hour of nine o'clock a. m. of said day, at the said chief office of said St. Louis Ore and Steel Company, number 409 North Sixth street, in said city of St. Louis, State of Missouri, a meeting of the stockholders of said company, at which meeting there appeared in person, or by proxy, stockholders of said steel company, in number representing (25,364) twenty-five thousand, three hundred and sixth-four shares of the capital stock of said corporation outstanding, being more than a majority of the shares of stock of said corporation, which meeting was then and there organ-
48 ized and held, as in such cases by law provided, and thereupon the following, among other resolutions, was offered and was voted upon by said stockholders present in person, or by proxy, at said meeting, to wit:

"Resolved, That for the purpose of increasing the working capital and plant of this company, the persons present and represented at this meeting of stockholders, do hereby consent that the bonded indebtedness of said corporation be increased by the issue of the bonds thereof, to an amount not exceeding one million dollars, to bear such interest, and to be payable at such time, and secured upon such property of the company in Missouri and Illinois, and in such manner and upon such conditions as the board of directors may deem expedient."

Which resolution, being seconded, was then and there adopted by the affirmative vote of all the persons then and there present, in person or by proxy, being the holders of (25,364) twenty-five thousand three hundred and sixty-four shares of the capital stock of said St. Louis Ore and Steel Company, being the larger amount in value (and more than two-thirds) of said stock, all of which, reference being had to the records of said corporation, will more fully and at large appear

And thereafter, at a meeting of the board of directors of said steel company, held upon due notice at the said chief office of said steel company, on the eighth (8th) day of May, A. D. 1882, a quorum being present, a resolution was unanimously adopted by said directors which did, in substance, direct that one thousand registered bonds of this corporation for one thousand dollars each, to be dated May 3d, A. D. 1882, payable on May 1st, A. D. 1902, bearing semi-annual interest, at seven per cent. per annum, principal
49 and interest payable at the office of the Farmers' Loan and Trust Company, in the city of New York, be issued by and in the name of said corporation, by the president thereof, under the seal of said corporation, attested by its secretary, said bonds to correspond in form and tenor with the engraved bond submitted to said board of directors at said meeting, by the president of said company;

and that for better securing the payment of said bonds, principal and interest, the president of said company, in the name and behalf thereof and under its corporate seal attested by the secretary thereof, do execute, acknowledge and deliver to said Farmers' Loan and Trust Company, as trustees, a mortgage upon and conveying to said trustees the lands and property of said St. Louis Ore and Steel Company, in the State of Missouri, except those situated in the city of St. Louis, by it acquired from, and formerly belonging to the Pilot Knob Iron Company, and also the lands and tenements situate in Jackson county, State of Illinois, acquired by said steel company from David Dows and wife, and Le Grand B. Cannon, formerly belonging to the Grand Tower Mining, Manufacturing and Transportation Company, and also those two certain tracts in the city of St. Louis, Missouri, formerly belonging to the Vulcan Steel Company, being the same two tracts mentioned and described in a certain mortgage deed of trust, dated May 24th, A. D. 1875, from the Vulcan iron works to Lackland and Edgar, trustees, recorded in Book 545, at page 142, in the office of the recorder of deeds of the city (formerly county) of St. Louis, Missouri, and intended to secure certain bonds issued by the Vulcan iron works in said mortgage deed of trust mentioned, and which will become due and payable on April 15th, A. D. 1885, and that the said mortgage correspond in form with and contain the covenants and conditions set forth in the mortgage deed also submitted to said board of directors at said meeting thereof by the president of said steel company.

50 All which, by reference to the records of said board of directors of said St. Louis Ore and Steel Company will more fully and at large appear.

And whereas, by and with the consent, authority and direction aforesaid, the president of said steel company hath caused to be prepared and engraved one thousand bonds of said company, numbered respectively from one to one thousand each, for the sum of ($1,000) one thousand dollars, and which bonds do respectively in form and tenor correspond with the engraved bond approved as aforesaid, by said board of directors at their said meeting on May 8th, A. D. 1882, each of which bonds is in the words and figures following, that is to say:

Copy of Bond.

UNITED STATES OF AMERICA, *State of Missouri.*

St. Louis Ore and Steel Company.

No. —, $1,000. 20 years, 7 per cent. $1,000, No. —.

First-Mortgage Registered Bond.

Know all men by these presents that the Saint Louis Ore and Steel Company, a manufacturing and business corporation, organized and doing business under the laws of the State of Missouri, is indebted unto —— —— or assigns in the sum of one thousand dollars lawful money of the United States of America, which sum

said company doth, by these presents, bind itself and agree to pay to the legal holder and registered owner of this bond, at the office of the Farmers' Loan and Trust Company, in the city of New York, State of New York, on the first day of May, A. D. 1902, together with semi-annual interest on said principal sum at the rate of seven per centum per annum, from the first day of May, A. D. 1882, inclusive, until the maturity of this bond, payable at the office aforesaid on the first day of November and May, respectively, in each and every year from the date hereof.

51

This bond is one of a series of one thousand bonds numbered respectively from 1 to 1,000, both inclusive, all of like date, tenor and amount, and in the aggregate amounting to one million dollars, the payment whereof, principal and interest, is secured by a certain first mortgage deed of trust, bearing date the 3d day of May, A. D. 1882, by and on behalf of said company (obligor herein) duly executed and delivered to the said Farmers' Loan and Trust Company of New York, as trustee for the holders of said bonds, and by which deed are conveyed to said trustee for that purpose, certain lands and tenements, with the improvements and appurtenances thereto, held by said company in fee simple, and situate in the States of Missouri and Illinois, and in said mortgage deed particularly set forth, and which mortgage is duly recorded in the several counties in which said mortgaged property is situated.

The issue of said bonds and execution, and delivery of said mortgage was duly authorized by vote of the stockholders of said St. Louis Ore and Steel Company, at a special meeting of said stockholders, held upon due notice as provided by law, on Wednesday, the 3d day of May, A. D. 1882, at the principal office of said company in the city of St. Louis, Missouri.

It is mutually agreed by and between the said St. Louis Ore and Steel Company and the holder of this bond, for himself and assigns, that said bond may be assigned and transferred, either in person or by attorney, but only on the transfer books to be kept therefor at the principal office of said company in said city of St. Louis, and at its transfer agency in said city of New York, and by an endorsement of such transfer made hereon by the treasurer or the transfer agent of said company.

52

In witness whereof, the said St. Louis Ore and Steel Company has caused these presents to be signed by the president thereof, and its corporate seal to be hereunto affixed and attested by its secretary at said city of St. Louis, Missouri, this third day of May, in the year of our Lord eighteen hundred and eighty-two, and hath also caused each bond of said series to be certified by said trustee before delivery thereof.

(Signed) For ST. LOUIS ORE AND STEEL COMPANY,
E. A. HITCHCOCK, *President.*

[CORPORATE SEAL.]
Attest: (Signed) O. L. GARRISON, *Secretary.*

Upon each of which bonds before the same shall become obligatory upon said obligor, therein is to be endorsed a certificate by said Farmers' Loan and Trust Company, trustee to the effect following, to wit: It is hereby certified that the within bond is one of a series of one thousand bonds, each for $1,000, secured by and mentioned in the mortgage of even date within referred to.

And whereas in pursuance of the authority and for the purposes aforesaid, it is intended to issue and dispose of said one thousand bonds for the benefit of said steel company, and to secure the same by this indenture, being the same instrument which was so submitted to and approved as to the form and tenor thereof, by said board of directors as aforesaid, at their said meeting on May eighth, A. D. 1882, this indenture being made upon the trusts here-
53 inafter set forth for the benefit and better security of the persons respectively, who shall or may, from time to time, become the legal holders and registered owners for value of said bonds, or any or either of them, and the several covenants, provisions, and conditions hereinafter set forth, being hereby declared to be mutually binding as well upon the said parties to this instrument as upon each and every the holder or holders of any of said bonds.

Now therefore, these presents witness, that in consideration of the premises and of the acceptance by said Farmers' Loan and Trust Company, of the trust hereby created, and the sum of ($5.00) five dollars by said trust company paid to said steel company, grant or receipt whereof is hereby acknowledged, the said St. Louis Ore and Steel Company, party of the first part doth hereby grant, bargain and sell, convey and confirm unto the said Farmers' Loan and Trust Company, party of the second part trustee as aforesaid, all and singular the following lands and tenements together with all buildings, fixtures and improvements thereon, and appurtenant thereunto, that is to say:

First. All and singular those certain lands heretofore belonging to the Pilot Knob Iron Company, and by it transferred to said steel company, by the articles of consolidation and association thereof lying and being situate in the State of Missouri and in the counties respectively below mentioned, that is to say:

The following tracts or parcels of land in the county of Jefferson, namely:

The undivided one-half of all the land lying between the center line of the St. Louis Iron Mountain railroad and the Missis-
54 sippi river, extending from the northern boundary line of the river front of the land belonging to the estate of Sanders Burgess at the time of his death, southwardly to the passway built on said railway just south of a house occupied in 1859 by James Burgess, Junior, and a strip (100) one hundred feet wide on the west side of said center line, and of the same extent from north to south, and from said passway to the south line of said river front, reserving for the use of said railroad a strip (70) seventy feet wide, lying on the west of said center line and a strip (30) thirty feet wide on the east of said center line, being the same and all the lands conveyed by Thomas Burgess and others to American Iron Mountain

Company and the Pilot Knob Company by deed dated July 13th, 1859, and recorded in Book "P," page 500, of the records of said Jefferson county: Also,

The undivided one-half of a tract of land conveyed to said American Iron Mountain Company and said Pilot Knob Iron Company by Thomas Burgess, Junior, by deed dated July 13th, 1859, and recorded in Book "P," page 561 of said Jefferson county records, and therein described as all that portion of the tract on which said Burgess then resided, lying between the center line of the St. Louis and Iron Mountain railroad, and the Mississippi river, extending from the north line to the south line of said tract, and a strip of ground (50) fifty feet wide adjoining said center line on the west, and extending from said north line to said south line. Also:

The following tracts or parcels of land in township (33) thirty-three, north of range (5) five east in the county of Madison and State of Missouri, to wit:

The south half of southwest quarter of section three, containing (80) eighty acres.

55 Lot number (5) five of the northwest quarter of section four, containing (80) eighty acres.

Lot number (2) two, of the southwest quarter of section six, containing (99.16) ninety-nine and sixteen-hundredths acres.

The northwest quarter of the northwest quarter of section ten (10) containing (40) forty acres.

Also the following tracts or parcels of land in township (34) thirty-four, north of range five (5) east in said county of Madison and State of Missouri, to wit:

The south half of the northeast quarter, and the south halves of lots (1 and 2) one and two, of the northwest quarter, containing in the aggregate (154.20) one hundred and fifty-four and twenty one-hundredths acres, all in section nineteen (19).

The southwest quarter of the northwest quarter, containing (40) forty acres, in section (20) twenty.

The northwest quarter of the southeast quarter, the southwest quarter of the northeast quarter, and the south halves of lots (1 and 2) one and two of the northwest quarter, containing in the aggregate (156) one hundred and fifty-six acres, all in section (30) thirty.

The east half of the southwest quarter of section (31) thirty-one, containing (80) eighty acres.

Also the following tracts or parcels of land in township (34) thirty-four, north of range (4) four east, in the county of St. Francois and State of Missouri, to wit:

56 The southeast quarter containing (165.84) one hundred and sixty-five and eighty-four one-hundredths acres, lot one of the northeast quarter containing eighty-two and ninety-three hundredths (82.93) acres, the east half of lot one of the northwest quarter containing (38) thirty-eight acres, and the east half of the southwest quarter containing eighty (80) acres, all in section one (1).

Fractional sections (7) seven, (8) eight and (9) nine, containing in the aggregate (29.18) twenty-nine and eighteen one-hundredths acres.

The southwest quarter of section (10) ten, containing (127) one hundred and twenty-seven acres.

The southwest quarter of the northeast quarter, and the east half and southwest quarter of the northwest quarter, containing in the aggregate (166.11) one hundred and sixty-six and eleven one-hundredths acres, all in section (12) twelve.

The southeast and southwest quarters, the west half of the northeast quarter, and the south half and northwest quarter of the northwest quarter, containing in the aggregate (520) five hundred and twenty acres, all in section (13) thirteen.

The west half of the southeast quarter, the west half of the northwest quarter and all of the southwest quarter, containing in the aggregate (327.32) three hundred and twenty-seven and thirty-two one-hundredths acres, all in section (14) fourteen.

57 The east half and southwest quarter of the southeast quarter, the east half and northwest quarter of the northeast quarter, the north half and southwest quarter of the northwest quarter, and the southeast quarter of the southwest quarter, containing in the aggregate ($424\frac{7}{100}$) four hundred and twenty-four and seven-hundredths acres, all in section (15) fifteen.

The west half of the northeast quarter and the northeast quarter of the southwest quarter of section sixteen (16) containing in the aggregate (120) one hundred and twenty acres.

All of section (17) seventeen, containing (681.41) six hundred and eighty-one and forty-one one-hundredths acres.

The east half and southwest quarter of the southwest quarter, and the northeast and southeast quarters, containing in the aggregate (440) four hundred and forty acres, all in section (18) eighteen.

Also the following tracts or parcels of land in township (35) thirty-five north of range (4) four, east in said county of St. Francois, and State of Missouri, to wit:

The southeast quarter of the northeast quarter of section (25) twenty-five, containing (40) forty acres.

The east half of section (36) thirty-six, containing (320) three hundred and twenty acres.

Also the following tracts or parcels of land in township (34) thirty-four, north of range (5) five, east in said county of St. Francois, and State of Missouri, to wit:

The south half of lot (2) two of the southwest quarter of section (18) eighteen containing (40) forty acres.

58 Also the following tract or parcel of land in township (35) thirty-five, north of range (5) five east, and in said county of St. Francois and State of Missouri, to wit:

Lot number two (2) of the southwest quarter of section (31) thirty-one, containing (101.64) one hundred and one and sixty-four one-hundredths acres.

Also the following-described tract or parcel of land in township (32) thirty-two, north of range (3) three east in the county of Iron and State of Missouri, to wit:

The east half of lot (2) two of the northwest quarter of section (1) one.

Also the following-described tracts or parcels of land in township (32) thirty-two, north of range (4) four east, in said county of Iron and State of Missouri, to wit:

The west half of lot one, of the northwest quarter, and the northeast quarter of the southeast quarter, containing, in the aggregate (80) eighty acres, all in section one.

Also the following-described tracts or parcels of land situated in township (33) thirty-three, north of range (3) three east, in said county of Iron and State of Missouri, to wit:

The south half of the southeast quarter, containing (80) eighty acres, lot (4) four, of the northeast quarter, containing (152.87) one hundred and fifty-two and eighty-seven one-hundredths acres, the west half of lot one, of the northwest quarter containing (40) forty acres, lot (3) three of the northwest quarter, containing (80) eighty acres, lot (4) four of the northwest quarter containing (136.59) one hundred and thirty-six and fifty-nine one-hundredths acres, and the south half of the southwest quarter containing (80) eighty acres, all in section (1) one.

59 The southeast quarter, containing (154) one hundred and fifty-four acres, lots (1) one, (4) four, (5) five, and (6) six, of the northeast quarter, containing together, three hundred and thirty-one and thirty-one one-hundredths (331.31) acres, lots (1) one, (2) two, (3) three, (4) four, and (5) five, of the northwest quarter, containing in the aggregate (400) four hundred acres, and the southwest quarter, containing (154.12) one hundred and fifty-four and twelve one-hundredths acres, all in section (2) two.

The southeast quarter, containing (160) one hundred and sixty acres, lots (1) one, (2) two, (3) three, (4) four, (5) five, and the west half and southeast quarter of lot (6) six, of the northeast quarter, containing in the aggregate four hundred and ninety-two and sixty one-hundredths (492.60) acres, lots (1) one, (2) two, (3) three, (4) four, and the east halves of lots (5) five and (6) six of the northwest quarter, containing in the aggregate (422) four hundred and twenty-two acres and the southwest quarter, containing (160) one hundred and sixty acres, all in section (3) three.

The southeast quarter, containing (160) one hundred and sixty acres, lots (1) one, (2) two, (3) three, (4) four, and *and* the west halves of lots (5) five and (7) seven of the northeast quarter, containing in the aggregate (407.47) four hundred and seven and forty-seven one-hundredths acres; lots (1) one, (2) two, (3) three, (4) four, (5) five, (6) six, and (7) seven of the northwest quarter, containing in the aggregate (589.59) five hundred and eighty-nine and fifty-nine one-hundredths acres, and the southwest quarter, containing (160) one hundred and sixty acres, all in section (4) four.

60 The northwest quarter of the southeast quarter, containing (40) forty acres, the east halves of lots (1) one, (2) two, (4) four, (5) five, and (6) six; the west halves of lots (6) six and (8) eight, and all of lot (7) seven of the northeast quarter, containing in the aggregate (343.89) three hundred and forty-three and eighty-nine one-hundredths acres, the west halves of lots (2) two and (3) three, and all of lots (6) six and (7) seven of the northwest quarter, con-

taining in the aggregate (240) two hundred and forty acres, and the southwest quarter, containing (160) one hundred and sixty acres, all in section (5) five.

The east half and the southwest quarter of the southeast quarter containing together (120) one hundred and twenty acres; lots (2) two and (3) three and the west half of lot (6) six of the northeast quarter, containing in the aggregate (200) two hundred acres; the east halves of lots (2) two and (3) three and the west halves of lots (6) six and (7) seven of the northwest quarter, containing in the aggregate (205.98) two hundred and five and ninety-eight one-hundredths acres, and the south half of lot one of the southwest quarter, containing forty (40) acres, all in section (6) six.

The southeast quarter, containing (160) one hundred and sixty acres; the southwest quarter of the northeast quarter, containing (40) forty acres; lot (1) one of the northwest quarter, containing (80) eighty acres, and lot (1) one and the north half of lot two (2) of the southwest quarter, containing together (120) one hundred and twenty acres, all in section seven (7).

The southeast quarter of the southeast quarter, containing forty (40) acres; the northeast quarter, containing (160) one hundred and sixty acres; and the east half of the northwest quarter, containing (80) eighty acres; all in section eight (8).

61 The northeast quarter, containing (160) one hundred and sixty acres; the north half and the southeast quarter of the southeast quarter, containing together (120) one hundred and twenty acres, and the northwest quarter, containing (160) one hundred and sixty acres, and the northeast quarter of the southwest quarter, and the southwest quarter of the southwest quarter, containing together (80) eighty acres; all in section nine (9).

The northeast quarter of the southeast quarter, containing (40) forty acres, the east half and the northwest quarter of the northeast quarter, containing together (120) one hundred and twenty acres, the west half and the northeast quarter of the northwest quarter, containing together (120) one hundred and twenty acres, and the southwest quarter, containing (160) one hundred and sixty acres, all in section ten (10).

The northeast quarter of the southeast quarter, containing (38.90) thirty-eight and ninety one-hundredths acres, the south half of the northeast quarter, containing (77.26) seventy-seven and twenty-six one-hundredths acres, the east half and the northwest quarter of the southwest quarter, containing together (77.26) seventy-seven and twenty-six one-hundredths acres, and the east half and the northwest quarter of the southwest quarter, containing together (116.70) one hundred and sixteen and seventy one-hundredths acres, all in section eleven (11).

The northwest quarter of the southeast quarter, containing (37.99) thirty-seven and ninety-nine one-hundredths acres, the east half of the northeast quarter, containing (80) eighty acres, the south half of the northwest quarter, containing (75.40) seventy-five and forty one-hundredths acres, and the north half of the southwest

62 quarter, containing (75.98) seventy-five and ninety-eight one-hundredths acres, all in section twelve (12).

The east half of section thirteen (13) containing (312.96) three hundred and twelve and ninety-six one-hundredths acres.

The northwest quarter, containing (160) one hundred and sixty acres, and the northwest quarter of the southwest quarter, containing (40) forty acres, all in section fifteen (15).

The east half of the southeast quarter, containing (80) eighty acres, the northeast quarter containing (160) one hundred and sixty acres and the north half and the southeast quarter of the northwest quarter containing together (120) one hundred and twenty acres, all in section (17) seventeen.

The east half and the southwest quarter of the southeast quarter containing together (120) one hundred and twenty acres, the northeast quarter containing (160) one hundred and sixty acres, the south halves of lots (1) one and (2) two of the northwest quarter, together containing (80) eighty acres, and lots (2) two and (3) three of the southwest quarter, together containing (133.53) one hundred and thirty-three and fifty-three one-hundredths acres, all in section (18) eighteen.

The south half of the southeast quarter containing (80) eighty acres, the east half of the northeast quarter containing (80) eighty acres, lots (2) two and (3) three, and the south half of lot (1) one of the northwest quarter, containing in the aggregate (173.84) one hundred and seventy-three and eighty-four one-hundredths acres,

63 and lots (1) one, (2) two and (3) three of the southwest quarter, together containing (214.97) two hundred and fourteen and ninety-seven one-hundredths acres, all in section (19) nineteen.

The west half and the southeast quarter of the southeast quarter, together containing (120) one hundred and twenty acres, and the west half of the section, containing (320) three hundred and twenty acres, all in section (20) twenty.

The south half of the southeast quarter containing (80) eighty acres, the northwest quarter of the northeast quarter containing (40) forty acres, the east half and the northwest quarter of the northwest quarter, together containing (120) one hundred and twenty acres, and the east half of the southwest quarter containing (80) eighty acres, all in section (21) twenty-one.

The east half of the northwest quarter of section (22) twenty-two, containing (80) eighty acres.

The east half of section (24) twenty-four containing (320) three hundred and twenty acres.

The northwest quarter of the northeast quarter containing (40) forty acres, and the southwest quarter of the northwest quarter containing (40) forty acres, and the northeast quarter of the southwest quarter, containing (40) forty acres, all in section (28) twenty-eight.

The east half of section (29) twenty-nine containing (320) three hundred and twenty acres.

The east half of section (30) thirty containing (320) three

64 hundred and twenty acres, the north half of lots (1) one and

(2) two of the northwest quarter, containing together (80) eighty acres, and the south half of lots (1) one and (2) two of the southwest quarter, together containing (80) eighty acres, all in section (30) thirty.

The west half and the northeast quarter of the southeast quarter, containing (120) one hundred and twenty acres, the northeast quarter containing (160) one hundred and sixty acres, lot (1) one and the south half of lots (2) two and (3) three of the northwest quarter, containing in the aggregate (197.24) one hundred and ninety-seven and twenty-four one-hundredths acres, and lots (1) one, (2) two and (3) three of the southwest quarter, containing in the aggregate (238.60) two hundred and thirty-eight and sixty one-hundredths acres, all in section (31) thirty-one.

The southwest quarter of the northeast quarter, containing (40) forty acres, and the north half and southwest quarter of the northwest quarter, together containing (120) one hundred and twenty acres, all in section (32) thirty-two.

The southwest quarter of the southeast quarter, containing forty (40) acres, and the northwest and southeast quarters of the southwest quarter, together containing (80) eighty acres, all in section (34) thirty-four.

Also the following tracts or parcels in township (34) thirty-four, north of range (3) three east, and in said county of Iron, to wit:

The south half and northwest quarter of the northwest quarter of section (15) fifteen, containing in the aggregate (129.24) one hundred and twenty-nine and twenty-four one-hundredths —.

65 The south half and northeast quarter of the southeast quarter, containing in the aggregate, (128.71) one hundred and twenty-eight and seventy-one one-hundreths acres, and the south half of the southwest quarter containing (85.80) eighty-five and eighty one-hundreths acres, all in section (16) sixteen.

The southeast quarter containing (160) one hundred and sixty acres, the southwest quarter of the northeast quarter, containing (40) forty acres; lots (1) one and (2) two of the northwest quarter together containing (146.70) one hundred and forty-six and seventy one-hundredths acres, and lots (1) one and (2) two of the southwest quarter, together containing (157.47) one hundred and fifty-seven and forty-seven one-hundredths acres, all in section (19) nineteen.

The northeast quarter of section (21) twenty-one, containing (171) one hundred and seventy-one acres.

The south half of section (22) twenty-two, containing (339.26) three hundred and thirty-nine and twenty-six one-hundredths acres; the southwest quarter of the northeast quarter, containing (43) forty-three acres, and the south half of the northwest quarter, containing (85.89) eighty-five and eighty-nine one-hundredths acres; all in said section (22) twenty-two.

The east half of the southeast quarter, saving and excepting therefrom (2.35) two and thirty-five hundredths acres, sold by Pilot Knob Iron Company to John W. Hancock, by deed recorded in said Iron county, in Book K, page 328, leaving as the portion of said tract hereby conveyed, the quantity of (85) eighty-five acres;

the southeast quarter of the northeast quarter, containing
66 (43.86) forty-three and eighty-six one-hundredths acres; the west half of the northwest quarter and the west half of the southwest quarter, together containing ($175\frac{3}{100}$) one hundred and seventy-five and three one-hundredths acres; all in section (24) twenty-four.

The north half of southeast quarter and east half of southeast quarter of southeast quarter and west half of southeast quarter of southeast quarter, containing in the aggregate (131.76) one hundred and thirty-one and seventy-six one-hundredths acres; the west half of the northwest quarter, containing (87.34) eighty-seven and thirty-four one-hundredths acres, and the northwest quarter of the southwest quarter and the east half of the southeast quarter of the southwest quarter, containing in the aggregate (67.20) sixty-seven and twenty one-hundredths acres; all in section (25) twenty-five.

The southeast quarter containing (171.69) one hundred and seventy-one and sixty-nine one-hundredths acres, the east half of the northeast quarter, containing (86.31) eighty-six and thirty-one one-hundredths acres, and the north half and southwest quarter of the southwest quarter, containing together (133.37) one hundred and thirty-three and thirty-seven one-hundredths acres; all in section (26) twenty-six.

The whole of section (27) twenty-seven, containing (674.24) six hundred and seventy-four and twenty-four one-hundredths acres.

The whole of section (28) twenty-eight, containing (675.38) six hundred and seventy-five and thirty-eight one-hundredths acres.

The northwest quarter of the southeast quarter, containing
67 (40) forty acres; the southwest quarter of the northeast quarter, containing (40) forty acres; lots (1) one and (2) two of he northwest quarter, together containing (152.25) one hundred and fifty-two and twenty-five one-hundredths acres, and the north half of lot one (1) of the southwest quarter, containing (40) forty acres; all in section (30) thirty.

The northwest quarter of the southeast quarter, containing (40.36) forty and thirty-six one-hundredths acres, the northeast quarter, containing (164.29) one hundred and sixty-four and twenty-nine one-hundredths acres, the east half and southwest quarter of the northwest quarter, together containing (123.22) one hundred and twenty-three and twenty-two one-hundredths acres, and the north half of the southwest quarter, containing (80.71) eighty and seventy-one one-hundredths acres, all in section (32) thirty-two.

The northeast quarter and west half of the southeast quarter, together containing (121.47) one hundred and twenty-one and forty-seven one-hundredths acres, the northeast quarter, containing (165.86) one hundred and sixty-five and eighty-six one-hundredths acres, and the west half, containing (327.81) three hundred and twenty-seven and eighty-one one-hundredths acres, all in section thirty-three (33).

The west half of the east half, and the west half of section (34) thirty-four, containing in the aggregate (492.90) four hundred and ninety-two and ninety one-hundredths acres.

The southeast and northwest quarters, together containing (330.75) three hundred and thirty and seventy-five one-hundredths
68 acres, the north half and southwest quarter of the northeast quarter, together containing (126.32) one hundred and twenty-six and thirty-two one-hundredths acres, and the north half of the southwest quarter, containing eighty-one and fifteen one-hundredths acres (81.15) all in section thirty-five (35).

The east half of the southeast quarter, containing (82) eighty-two acres, the northeast quarter, containing (172.$\frac{1}{100}$) one hundred and seventy-two and one one-hundredths acres, and the west half of the southwest quarter, containing (82) eighty-two acres, all in section (36) thirty-six.

Also the following tracts or parcels of land, situate in township (33) thirty-three, north range four (4) east and in said county of Iron.

The southeast quarter, containing (160) one hundred and sixty acres; lots (1) one, (2) two and (5), five, of the northwest quarter, containing in the aggregate (269.79) two hundred and sixty-nine and seventy-nine one-hundredths acres, and the south half and northeast quarter of the southwest quarter, containing together (120) one hundred and twenty acres, all in section one (1).

The south half and northwest quarter of the southeast quarter, together containing (120) one hundred and twenty acres; lot (5) five of the northeast quarter, containing (122.88) one hundred and twenty-two and eighty-eight one-hundredths acres; lots (3) three, (4) four and (5) five, and the west half of lot (1) one of the northwest quarter, containing in the aggregate (300.49) three hundred and forty-nine one-hundredths acres, and (3) three undivided fourths (4ths) of lot (2) two of said northwest quarter, which said lot contains (76.32) seventy-six and thirty-two one-hundredths acres, all in section two (2).

69 The east halves of lots one (1) and five (5) in the northeast quarter of section (3) three, containing in the aggregate (98.99) ninety-eight and ninety-nine one-hundredths acres, and all of the east halves of lots (2) two, (3) three and (4) four of said northeast quarter not heretofore sold to James Nobeo, containing in the aggregate (70) seventy acres, all in section (3) three.

Lot (5) five of the nort-west quarter of section (6) six, containing (102.70) one hundred and two and seventy one-hundredths acres.

The northeast quarter of the northeast quarter of section (10) ten, containing (40) forty acres.

The west half and southeast quarter of the southeast quarter, containing together (120) one hundred and twenty acres, the southwest and northeast quarters of the northeast quarter, together containing (80) eighty acres, and the northwest quarter of the southwest quarter, containing (40) forty acres, all in section (11) eleven.

All of section (12) twelve, containing (640) six hundred and forty acres.

The north half of the northeast quarter, all of the northwest quarter, and the northwest quarter of the southwest quarter, con-

taining in the aggregate (280) two hundred and eighty acres, all in section (13) thirteen.

The north half of the southeast quarter, all of the northeast and northwest quarters, and the north half and southwest quarter of the southeast quarter, containing in the aggregate (520) five hundred and twenty acres, all in section (14) fourteen.

70 The west half of the west half of section (15) fifteen, containing (160) one hundred and sixty acres.

The west half of the northeast quarter, lot (1) one of the northwest quarter, and lots (1) one and (2) two of the southwest quarter, containing in the aggregate (338) three hundred and thirty-eight acres, all in section eighteen (18).

The nort-west quarter of the northeast quarter, the north half of lot one (1) *one*, and the south half of lot two (2) of the northwest quarter, and the north half of lot (2) two of the southwest quarter, containing in the aggregate (175.85) one hundred and seventy-five and eighty-five one-hundredths acres, and a part of the southwest quarter of the northeast quarter, containing two and seven one-hundredths ($2\frac{7}{100}$) acres, and described as follows: Beginning at the northeast corner of said quarter, and running thence west (5) five chains (50) fifty links, thence south (2) two chains, thence south ($77\frac{1}{2}$) seventy-seven and a half degrees, east (7) seven chains (25) twenty-five links, thence north (3) three chains (55) fifty-five links, and thence west (1) one chain (63) sixty-three links to the beginning, all in section (19) nineteen.

The northeast quarter of the southeast quarter, the south half of the northeast quarter, and the east half of the northwest quarter, containing in the aggregate (200) two hundred acres, all in section (22) twenty-two.

Also the following parcels in township (34) thirty-four, north of range (4) four east, and in said county of Iron, to wit:

71 The southeast and northeast quarters, and lots (1) one and (2) two of the southwest quarter, containing in the aggregate (464.92) four hundred and sixty-four and ninety-two one-hundredths acres, and all of the northwest quarter except (30) thirty acres sold to David Weiss, by deed recorded in Book E, page 303, Iron county records, leaving in said northwest quarter as the quantity hereby conveyed (103.21) one hundred and three and twenty-one one-hundredths acres, all in section (19) nineteen.

The north half and southwest quarter of the northeast quarter, the west half and southeast quarter of the southeast quarter, and the northwest and southwest quarters, all in section (20) twenty, and containing in the aggregate (596.92) five hundred and ninety-six and ninety-two one-hundredths acres.

The southeast and southwest quarters, the south half of the northeast quarter, and the west half and southeast quarter of the northwest quarter, containing in the aggregate (520) five hundred and twenty acres, all in section (21) twenty-one.

The east half and southwest quarter of the southeast quarter, the north half of the northeast quarter, the east half and northwest quarter of the northwest quarter, and the southwest quarter, con-

taining in the aggregate (509.76) five hundred and nine and seventy-six one-hundredths acres, all in section (22) twenty-two.

The east half and southwest quarter of section (23) twenty-three, containing together (489.24) four hundred and eighty-nine and twenty-four one-hundredths acres.

The southeast quarter, the south half of the southwest quarter,
the south half and northwest quarter of the northeast quarter
72 and the north half and southwest quarter of the northwest
quarter, containing in the aggregate (498.53) four hundred and ninety-eight and fifty-three one-hundredths acres, all in section (24) twenty-four.

The east half and southwest quarter of the southeast quarter, the east half and northwest quarter of the northeast quarter, the north half and southwest quarter of the northwest quarter and the southwest quarter, containing in the aggregate (540.72) five hundred and forty and seventy-two one-hundredths acres, all in section (25) twenty-five.

All of section (26) twenty-six containing (640) six hundred and forty acres.

All of section (27) twenty-seven, containing (675.36) six hundred and seventy-five and thirty-six one-hundredths acres.

The east half of the southeast quarter, the west half of the southwest quarter and the north half of section (28) twenty-eight, containing in the aggregate (480) four hundred and eighty acres.

All of section (29) twenty-nine, containing (683.26) six hundred and eighty-three and twenty-six one-hundredths acres.

The southeast quarter and lot (1) one, and the south half of lot (2) two, of the southwest quarter, containing in the aggregate (277.92) two hundred and seventy-seven and ninety-two one-hundredths acres, and all of the northeast and northwest quarters, except so much thereof as has been laid out as the town of Pilot Knob, leaving to be hereby conveyed (197.26) one hundred and ninety-seven and twenty-six one-hundredths acres, all in section (30) thirty.

73 The north half, the southwest quarter, the west half and
northeast quarter of the southeast quarter, containing in the aggregate (577.96) five hundred and seventy-seven and ninety-six one-hundredths acres, and all of the southeast quarter of the southeast quarter not heretofore sold to T. D. Davis and T. R. Goulding, leaving as the quantity to be hereby conveyed (23.64) twenty-three and sixty-four one-hundredths acres, all in section (31) thirty-one.

The west half and northeast quarter of the northeast quarter, the east half and northwest quarter of the northwest quarter, and all of the northeast quarter of the southwest quarter, except two acres conveyed to Edwin May, containing in the aggregate (302.44) three hundred and two and forty-four one-hundredths acres, all in section thirty-two (32).

The northeast quarter of the northeast quarter, and the north half and southwest quarter of the northwest quarter, containing in the aggregate (160) one hundred and sixty acres, all in section thirty-three (33).

All of section (34) thirty-four, containing (657.37) six hundred and fifty-seven and thirty-seven one-hundredths acres.

All of section (35) thirty-five, containing (640) six hundred and forty acres.

The north half of the northeast quarter, the east half of the southwest quarter and all of the northwest quarter of section (36) thirty-six, containing in the aggregate (247.74) two hundred and forty-seven and seventy-four one-hundredths acres.

Also the following lots in the town of Pilot Knob in said county of Iron, as the same are shown on the recorder's plat of said town, to wit:

74 Lot (6) six, (7) seven, (25) twenty-five, and (26) twenty-six, in block number (3) three; lot (4) four, in block number (12) twelve.

Lots (5) five, (6) six, (7) seven, (8) eight, (9) nine, (17) seventeen, (18) eighteen, (19) nineteen, (20) twenty, (21) twenty-one, (22) twenty-two, (23) twenty-three and (24) twenty-four, in block No. (13) thirteen; lots (6) six, (7) seven, (11) eleven and (12) twelve in block No. (14) fourteen; lots (1) one, (2) two, (3) three, (4) four, (9) nine and (10) ten in block No. (16) sixteen; lot (14) fourteen in block No. (25) twenty-five; lots (7) seven and (8) eight in block No. (27) twenty-seven; lot (3) three in block No. (30) thirty; lots (3) three, (4) four and (5) five in block No. (32) thirty-two; lots (4) four, (5) five, (6) six and (7) seven in block No. (41) forty-one.

Also the following lots in the North addition to the town of Ironton, in said county of Iron, as shown on the recorded plat of said addition, to wit:

Lots (3) three, (4) four, (5) five, (6) six, (7) seven and (8) eight in block No. (7) seven, and the whole of blocks (12), twelve, (13) thirteen, (14) fourteen and (15) fifteen.

Also lot No. (4) four in block (7) seven of the East addition to the town of Ironton, in said county of Iron, as shown on the recorded plat of said addition.

Together with all and singular the ores and minerals upon or in said lands, and all mines and mining works in progress, all blast and other furnaces, buildings, constructions, fixtures, tramways, railways and other improvements constructed or to be constructed thereon, and all appurtenances, rights and privileges thereunto appertaining, also,

75 Second, all and singular the following-described lands and tenements lying and being situate in the county of Jackson, and State of Illinois, heretofore belonging to the Grand Tower Mining Manufacturing and Transportation Company, and being the same lands acquired by said steel company, grantor herein, by deed of David Dows and wife and Le Grand B. Cannon, dated March *March* 25th, A. D. 1882, recorded in the recorder's office of said Jackson county, in Book 19 of Deeds, at page 5, and following, that is to say:

In township nine south range, one west of the third principal meridian.

Part of the northwest quarter of the southeast quarter of section

sixteen, commencing at a point on the line between the northwest quarter and the southwest quarter of the southeast quarter of said section, said point being one hundred feet east of the center of the Illinois Central railroad, thence running north five degrees thirty minutes west and parallel with the said railroad 16.50 chains, thence north eighty-four degrees thirty minutes east $6\frac{8}{100}$ chains, thence south five degrees thirty minutes east 16.50 chains, thence south eighty-four degrees thirty minutes west $6\frac{5}{100}$ chains to the place of beginning; the northeast quarter of the southwest quarter, that part of the northwest quarter of the southeast quarter lying west of the Illinois Central railroad, the northeast quarter of the southeast quarter of the southwest quarter, and the east half of the northwest quarter of the southeast quarter of the southwest quarter of said section sixteen.

In township eight, south range two, west of the third principal meridian.

The southwest quarter of section seven, the south half of the
76 northeast quarter, and the southeast quarter of section twenty-six, the north half of the southwest quarter, and the south half of the southwest quarter of section twenty-eight, the northwest quarter of section twenty-nine, the northeast quarter of the northeast quarter of section thirty-one, part of the west half of the northeast quarter of section thirty-two, commencing at the southwest corner of the northeast quarter of said section, thence east $27\frac{1}{2}$ rods, thence north 118 rods, thence west $27\frac{1}{2}$ rods, thence south 118 rods to the place of beginning, and the north half of the northwest quarter of said section thirty-two, the south half of the south half of the northwest quarter, the north half of the southwest quarter, the northeast quarter and the southeast quarter of section thirty-three, the northeast quarter and south half of section thirty-four, the northeast quarter of the southeast quarter of section thirty-five, the east half of section thirty-six.

In township nine, south range two, west of the third principal meridian.

The west half of the northeast quarter of section (1) one, the northeast quarter of the southeast quarter, and the south half of the southeast quarter section (2) two; the north half of the northeast quarter; the northwest quarter, of the southwest quarter and (100) one hundred acres off the west side of section (3) three; the northeast quarter of section (4) four; the southeast quarter of section (6) six; the northeast quarter and the northwest quarter of section (7) seven; the northeast quarter, excepting (26.66) twenty-six and sixty-six one-hundredths acres off the east side of said quarter; the northwest quarter and the southeast quarter of section (8) eight; the northeast quarter; all that part of the northwest quarter lying south of the Big Muddy river; the southwest quarter and the southeast quarter of section (9) nine; the northeast quarter and the
77 northwest quarter; the southwest quarter and the southeast quarter of section (10) ten; the northeast quarter of the southwest quarter; the southeast quarter of the southwest quarter; the northwest quarter of the southeast quarter, and the southeast

quarter of the southeast quarter of section (11) eleven; the northeast quarter of the northwest quarter; the northwest quarter of the northwest quarter, and the west half of the southwest quarter of section (14) fourteen; the northeast quarter of the northeast quarter; the west half of the northeast quarter; the northeast quarter of the northwest quarter; the northwest quarter of the northwest quarter; the southwest quarter of the northwest quarter; the southeast quarter of the northwest quarter; the east half of the southwest quarter; the east half of the southeast quarter, and the west half of the southeast quarter of section (15) fifteen; the north half of the northeast quarter; the southwest quarter of the northeast quarter; the southeast quarter of the northeast quarter, and the northwest quarter of section (16) sixteen.

In township nine, south range three, west of the third principal meridian:

The south half of the northeast quarter; the southeast quarter of the southwest quarter, and the southeast quarter of section one; the north half of the northwest quarter of section three; the west half of section five; the southwest quarter of section eight; the west half of the southwest quarter of section thirty-three.

In township ten, south range three, west of the third principal meridian:

78 The northwest quarter of section nineteen; the west half of the southeast quarter of section twenty; the east half of the northwest quarter; the northwest quarter of the northwest quarter, and the southeast quarter of section twenty-nine; the northeast quarter of the northeast quarter, that part of the northwest quarter of section thirty, commencing at the half-mile corner on the west side of said section, thence north, along the range line 14.68 chains, thence east 27.25 chains, thence south 14.68 chains, thence west 27.25 chains to the place of beginning, the southwest quarter of section thirty; that part of the northwest quarter of section thirty-one, commencing at the northwest corner of said section, thence east to the half-mile corner on the north line of said section, thence south 70° 45 min. west to the Mississippi river, thence up said river to the line between ranges three and four, thence north to the place of beginning.

In township ten south range four west of the third principal meridian:

Fractional southeast quarter of section eleven, the northwest quarter and the southwest quarter of section thirteen, the fractional northeast quarter of section fourteen, excepting so much thereof as may have been legally reserved by Jacob Kunce and wife in their deed of conveyance, and which is of record in the recorder's office, in volume 5 of deeds, page 238, in said county; the fractional southeast quarter of section fourteen; the fractional section twenty-three, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof and from the party of the first part; the northwest quarter of section twenty-four, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof, and from the party

of the first part; that part of the fractional southwest quarter of section twenty-four, commencing at the southeast corner of
79 the southwest fractional quarter of said section, thence north 40.45 chains to the center of said section, thence west on the line between the northwest quarter and the southwest quarter of said section 22.67 chains to a stake, thence south 30 degrees east to a point on the line between sections twenty-four and twenty-five, distant 4.75 chains from the half-mile corner between said sections, thence east on said line 4.75 chains to the place of beginning, excepting the grave-yard tract, bounded as follows: Commencing at a stake on the eastern boundary line of the southwest — of section twenty-four, distant 620 feet from the center of said section, thence south 83 degrees 46 minutes west 440 feet, thence south 6 degrees 14 minutes east 594 feet, thence north 33 degrees 46 minutes east 440 feet to a point of said boundary line, thence northward along said boundary line 894 feet to the place of beginning, that part of the southwest quarter of said section, commencing at the northwest corner of said quarter section, thence east on the north line of said quarter section 17.33 chains, thence south 30 degrees east 21.75 chains to a stake, thence west on a line parallel to said north line to the section line between sections twenty-three and twenty-four, thence north on said line to the place of beginning; that part of the fractional southwest quarter of section twenty-four, commencing at the southwest corner of said quarter section, thence north 29 degrees west along the bank of the Mississippi river 13.77 chains, thence north 45 degrees west along the bank of said river 7.45 chains to the southeast corner of fractional section twenty-three, thence north on the line between fractional sections twenty-three and twenty-four 1.74 chains, thence east on a line parallel to the north line of said fractional southwest quarter section 20.50 chains to a stake, thence south 30 degrees east 22.50 chains to a stake
80 on the line between sections twenty-four and twenty-five distant 4.75 chains from the half-mile corner between said sections, thence west on said line 25.35 chains to the place of beginning; that part of the fractional section twenty-five, commencing at a stake on the line between sections twenty-four and twenty-five and distant 4.75 chains west of the half-mile corner between said sections, thence south 40 degrees east 15 chains to a stake at the foot of Walker's hill, thence north 54 degrees east 10 chains, thence north 40 degrees west 9.26 chains to a point on the section line between sections twenty-four and twenty-five, thence west on said line 11.55 chains to the place of beginning; that part of fractional section twenty-five commencing at a stake on the line between sections twenty-four and twenty-five and distant 4.75 chains west of the half-mile corner between said sections, thence south 40 degrees east 5 chains, thence south 54 degrees west 18.75 chains to the Mississippi river, thence northward along the bank of said river to the northwest corner of fractional section twenty-five, thence along the line between said sections 25.35 chains to the place of beginning; that part of fractional section twenty-five lying on the river side in front of the surveyed plat of lots and streets of Marshall A. Evans' addi-

tion to the town of Grand Tower, which plat is of record in the recorder's office, in Book "Y" of Deeds, page 266, in said county; that part of fractional section twenty-five commencing at a point on the Mississippi river distant 22.40 chains northward from a point where the south line of said section strikes the said river, thence north 55 degrees 30 minutes east 31.35 chains to the east line of said section, thence on said line north 5 degrees 30 minutes west 6.17 chains, thence north 6 degrees 30 minutes west 9.81 chains, thence south 59 degrees 5 minutes west 35.91 chains to a stone, thence south 31 degrees *degrees* 5 minutes east two chains, thence south 59 degrees 5 minutes west 5 chains, thence
81 north 31 degrees 5 minutes west 2 chains, thence south 59 degrees 5 minutes west $\frac{82}{100}$ chains to the said river, thence down said river to the place of beginning, excepting the tract previously granted to Frederick Schickle *et al.*, by said party of the first part, bounded as follows: Commencing at a point on the Mississippi river distant two chains southward from the northwest corner of a tract of land heretofore conveyed by a deed from Wash. L. Harris and wife to the Mount Carbon Coal and Railroad Company, which deed is of record in the recorder's office in Book "Q," page 566, in said county; thence north 59 degrees east 5.50 chains to a stone, thence north 31 degrees west 2 chains to a stone, thence north 59 degrees east 18.13 chains to a stone, thence south 31 degrees east 9.51 chains to a stone, thence south 59 degrees west 22.72 chains to the Mississippi river, thence along the bank of said river to the place of beginning; that part of fractional section twenty-five commencing at the southeast corner of said section, thence along section line west to the Mississippi river; thence along the bank of said river north 34 degrees 40 minutes west 22.40 chains, thence north 55 degrees 30 minutes east 31.25 chains to the range line, thence southward 34.68 chains to the place of beginning; the fractional section thirty-six.

Together with all and singular the coal and other minerals, mines, blast furnaces, buildings, constructions, fixtures, improvements and appurtenances, rights and privileges, thereunto appertaining, acquired by said steel company, by and under said deed from Dows and Cannon; provided, nevertheless, that there is hereby excepted from the operation of this conveyance, all and singular, the railroad, road-bed, rights of way, telegraph lines, buildings, fixtures and appurtenances therewith connected and necessary for the operation of the railroad heretofore constructed and operated by
82 the Grand Tower Mining, Manufacturing and Transportation Company, and now owned and operated by the Grand Tower and Carbondale Railroad Company, a corporation formed under the laws of Illinois.

Also the following other tract or parcel of land and appurtenances, also situate in Jackson county, Illinois, and acquired by said steel company, grantor herein, by deed of the Mount Carbon Coal and Coke Company, dated March 28th, A. D. 1882, and recorded in the office of the recorder of deeds of said Jackson county, in Book 16, at page 549, which tract is described as follows, to wit:

Commencing at a point on the south bank of the Big Muddy river, situated south (81¾°) eighty-one degrees forty-five minutes east, ($11\frac{2}{100}$ ch.) eleven and two-hundredths chains from the northwest corner of the northeast quarter of section (9) nine, township (9) nine south, range (2) two west of the (3d) third principal meridian, thence north (80°) eighty degrees east, (11.24 ch.) eleven and twenty-four one-hundredths chains to a point (26 ft.) twenty-six feet from the center of the Grand Tower and Carbondale railroad track, thence south (38⅓°) thirty-eight degrees thirty minutes west, (4.63 ch.) four and sixty-three hundredths chains, thence south (34¼°) thirty-four degrees and fifteen minutes west, (3.50 ch.) three and fifty one-hundredths chains, thence south (30¾°) thirty degrees and forty-five minutes west (11.50 ch.) eleven and fifty one-hundredths chains to a point (26 ft.) twenty-six feet from the centre of the Grand Tower and Carbondale railroad track, thence north (60°) sixty degrees west (4 ch.) four chains, thence north (13° 45 min.) thirteen degrees and forty-five minutes east, (12.7 ch.) twelve and seven-tenths chains to the place of beginning, containing (10) ten acres, more or less. Together with all and singular the coke ovens, furnaces, build-
83 ings, improvements and fixtures erected, or to be erected, on said premises for the purpose of making coke from bituminous coal, but not including any movable or personal property not forming part of the realty.

Third, also all and singular the following-described lands and tenements situate and lying within the corporate limits of the city of St. Louis, Missouri, heretofore belonging to the Vulcan Steel Company, and acquired by said St. Louis Ore and Steel Company, grantor herein, under the articles of consolidation thereof, together with all permanent buildings and improvements, furnaces, rail mill, machinery and apparatus for manufacturing iron and steel, erected or which may be erected or placed upon said premises or any part thereof, not being movable or personal property, the said lands hereby intended to be conveyed being particularly described as follows, that is to say:

That certain tract of land being part of block No. (78) seventy-eight of the commons of Carondelet, survey number (3) three north of the River Des Peres, containing (6.16) six acres and sixteen-hundredths of an acre, more or less, bounded north by Catalan street, east by Front street, south by Lorenz street, and west by the centre line of the Iron Mountain railroad, and being composed of lots number- (1) one and (2) two of a subdivision of said block number (78) seventy-eight by commissioners in partition in the case of Primus Emerson *versus* R. C. McAlister and others in the St. Louis land court; also all the land lying between said above-described tract of 6.16 acres and the Mississippi river.

Also that certain other tract of land in the commons of Caron-
delet north of River Des Peres, containing (9.18 arpents) nine
84 arpents and eighteen-hundredths of an arpent, more or less, being lot (87) eighty-seven, in survey number (3) three, as designated on the plat of the subdivision of said portion of the Carondelet commons, made under the direction of the board of trus-

tees of the town of Carondelet by Zeno Mackay, and recorded among the files in said recorder's office to which said plat reference is hereby made.

Both said tracts last above described were acquired by said Vulcan Steel Company (formerly Vulcan iron works) by deed from the Kingsland Iron Company, dated July 8th, A. D. 1871, recorded in Book 469, page 252, in the recorder's office of the city (formerly county) of St. Louis, Missouri, but both said tracts last mentioned are hereby conveyed subject to the prior lien of a certain mortgage deed of trust made by said Vulcan iron works to Rufus J. Lackland and Timothy B. Edgar, trustees, dated May 24th, A. D. 1875, recorded in Book 545, at page 142 thereof, in the office of the recorder of deeds of the city (formerly county) of St. Louis, Missouri, to which deed of trust and the said record thereof express reference, is hereby made.

To have and to hold all and singular the above described and mentioned lots, tracts and parcels of land, together with all buildings, fixtures, furnaces, rail mills and other permanent erections and improvements thereon, or which may be thereon erected or placed by said grantor pending the trust hereby created, and also all rights, privileges and appurtenances thereunto in anywise appertaining, unto the said Farmers' Loan and Trust Company, party of the second part, to the use of it, the said trust company, and of its successors in said trust, if any, and assigns.

But upon trust, nevertheless, for the benefit and better se-
85 curity of the persons, respectively, who shall or may, from time to time, be or become holders for value and registered owners of the said bonds of said steel company hereinbefore mentioned, or any of them, and with the powers and duties on the part of said trustees in this behalf and subject always to the conditions and covenants respectively hereinafter set forth, that is to say:

The said steel company covenants with said trust company for the benefit aforesaid, that the principal and interest on each of said bonds negotiated and outstanding for value shall be paid when due, respectively, according to the tenor thereof, to the legal holder and registered owner of the same; and it is further mutually agreed that upon the payment or surrender and cancellation of all of said bonds which may or shall be negotiated for value for account of said steel company, the trust hereby created shall cease, and said trustee or its successor shall execute a proper deed or deeds of release therefrom of the property hereinbefore described, provided, that if at the maturity of said bonds all of them be not presented for payment, and payment thereof accepted, then upon the deposit by or for account of said steel company or assigns with said trustee or its successor in trust of an amount of money sufficient to pay and discharge all of said bonds still outstanding, then said trustee or its successor shall, upon demand by said steel company or assigns, release said lands and property from the lien of this mortgage deed by proper conveyance which shall be effectual therefor.

And this indenture further witnesseth: that pending this trust and until sale or foreclosure upon default in payment of the prin-

cipal of any of said bonds outstanding for value, or of any interest due and payable thereon, the absolute right is reserved to said steel company, its officers, agents, lessees and assigns, respectively,
86 to occupy and possess the said above described and granted premises and every part thereof, and to use and operate for its own benefit the buildings, improvements, plant and machinery thereon, and to dig, mine, take away and dispose of any ores, minerals, coal, timber and other products thereof, for the benefit and profit of said steel company without accountability therefor, and further—

That pending said trust it shall be lawful for said steel company, the said trust company, or its successor in trust, approving and joining in such sale, to sell at public or private sale, upon any terms by them agreed on, any part of the property hereinbefore described, and to convey the same discharged of any trust or lien hereunder to the purchaser or purchasers thereof; provided that said trustee shall receive the proceeds of all such sales, and as often as such proceeds shall amount to ($5,000) five thousand dollars, shall apply the same to the purchase of outstanding bonds, secured by this mortgage, at a price not to exceed ten per cent. in excess of their par value, and all sums so received by said trustee until the same shall amount to ($5,000) five thousand dollars, or if and so long as such purchase of bonds cannot be made, then all sums so received shall be by said trustee safely invested and used to the best advantage as a sinking fund for the purchase of said bonds and for the payment of the principal thereof at maturity.

It is further mutually covenanted, that in case of default in payment, according to the tenor thereof, of the principal sum of any of said bonds outstanding, for value, or any part thereof when due, or of any interest due on any such bond or part thereof, and such default continue for six months after demand of payment of such overdue interest, made at the office of said trust company, in New York,
87 by the registered holder of any such bond, in either case said trust company, or its successor in said trust, shall upon the request in writing of the registered holders of the majority in amount of said bonds then outstanding, for value sell said property hereinbefore described, or so much thereof as may be necessary, to pay the principal of all of said bonds so outstanding, whether due or not, by their terms, and all interest accrued thereon up to the day of sale, and remaining unpaid, at public auction, to the highest bidder for cash; provided that said lands in Illinois shall be publicly sold at the front door of the principal office of said company, at Grand Tower, Jackson county, Illinois, in one or more parcels, as may be specified in such written request for the sale thereof; and said lands in Missouri, hereinbefore described, shall be sold at the east front door of the court-house in said city of St. Louis, Missouri, in one or more parcels, as may be specified in such written request for the sale thereof. In making any such sale, said trustee shall comply with the lawful request in writing of such majority in interest of the holders of such bonds in determining what part of said mortgaged property shall be first sold, and if the property sold shall

not suffice to pay the principal and interest of all bonds outstanding, together with expenses of the trust, a further sale or sales shall be had until enough or all of said mortgaged property shall have been sold hereunder for that purpose.

Said trustee shall give not less than thirty days' public notice of any sale made hereunder, by advertisement setting forth the time, terms and place of sale, and the property to be sold, such advertisement to be published once a week for at least four weeks next prior to such sale, in at least one daily newspaper, published in the English language, in the city of St. Louis, Missouri, and one daily newspaper, published in the English language in the city of New York,
88 State of New York; and in case said lands in Jackson county, Illinois, or any part thereof be sold hereunder, a like notice of such sale shall also be published weekly, for at least four weeks, in some newspaper published in Jackson county, Illinois, or if none be published therein, then in the nearest newspaper.

It is hereby understood and stipulated, that said trust company and its successors shall and may, upon the written request of a majority in amount of the holders of all the bonds then outstanding and unpaid, the payment whereof is secured by this indenture, adjourn such sales from time to time, in accordance with such request, of which adjournment notice shall be given by the continuation of such publications, stating also the fact of such adjournment and the day to which such sales were adjourned.

And upon any such sale said trustee shall receive the proceeds thereof, and shall convey by deed in fee simple, to the purchaser or purchasers, the property so sold, discharged of any trust hereunder, and shall forthwith apply said proceeds—first, to payment of the reasonable and necessary costs of executing said trust, including reasonable and customary compensation to, and counsel fees and other necessary disbursements of said trustee; secondly, to the payment in full of all interest theretofore accrued, due and remaining unpaid upon any of said bonds outstanding for value; thirdly, to the payment in full of all interest accrued upon any of said bonds outstanding for value since the date when interest last previously accrued due thereon up to the day of such sale, and the remainder of said proceeds shall be applied *pro rata* to the payment of the principal of all of said bonds negotiated and then outstanding for value unto the registered holders thereof respectively.

And the said steel company, grantor, covenants that all conveyance in fee of said lands and property above described,
89 which shall be made by said trustee, or its successors, in pursuance and due execution of the power of sale herein conferred shall vest in the purchaser the absolute title to all the real estate and property in and by such instruments declared to be conveyed, and all recitals contained in all such deeds shall in all courts and places wheresoever the same may be offered in evidence be taken to be true, and said steel company, and all persons claiming by, under or through, said steel company, grantor herein, held to be estopped and absolutely bound and barred thereby, and all such conveyances shall in all courts and places be held and construed to

convey to the grantee therein a fee-simple and absolute title to all the real estate and property therein described and declared to be conveyed.

And whereas the said two tracts of land hereinbefore described, situate in the commons of Carondelet, north of the River Des Peres, are now subject to the lien of said mortgage deed of trust, dated May 24th, A. D. 1875, made by Vulcan iron works to secure its bonds amounting to one million of dollars, and to mature in April, 1885, and it may be desirable for said steel company, grantor herein, to extend or renew the indebtedness evidenced by said bonds when the same shall fall due upon the security of said property so already mortgaged therefor; now therefore it is hereby expressly covenanted that it shall be lawful for said steel company when the principal of said Vulcan iron works bonds shall become due and payable either to procure an extension or renewal of said indebtedness from the holders of said bonds respectively or any part thereof, without cancelling the same, and in such case to permit the said mortgage executed by said Vulcan iron works to remain in force as security for said renewed or extended indebtedness without impairing the priority thereof to the lien upon said lots created by these
90 presents, or to negotiate a new loan for the purpose of paying off said Vulcan iron works bonds in full, and therefor to issue its own new bonds to an amount not exceeding one million of dollars, and to secure such new issue of bonds by executing a new mortgage deed of trust upon the said tracts described and conveyed in said mortgage, dated May 24th, A. D. 1875, and all improvements, buildings and erections subsequently made or added to the same, and in such case it is hereby declared and covenanted that the lien of such new mortgage shall be and remain prior and superior to the lien upon said premises created by this instrument.

And it is further hereby declared and covenanted between said parties that in the event that said Farmers' Loan and Trust Company shall, pending the trust hereby created, be or become for any reason disqualified or unable to execute the trusts hereby declared and erected, or shall resign said trust, or shall refuse to execute the same then, and in either of said events, it shall be lawful for the board of directors of said steel company, grantor herein, by resolution entered upon their records to appoint some other competent person or persons to be trustee or trustees hereunder in the place and stead of said Farmers' Loan and Trust Company, and the person or persons so appointed and accepting said trust shall thereupon be vested with all and singular the powers, rights and duties in that behalf hereby conferred upon said trust company, and shall be empowered as the successor thereof to execute all powers of sale of said mortgaged property herein conferred upon said trust company, and in virtue thereof to appoint and convey in fee simple to the purchaser or purchasers of said property at any such sale the property by it, or him, or them, so sold hereunder, and to institute and prosecute any and all proper suits for foreclosure or other enforcement of the trusts herein declared.

91 And this indenture further witnesses that said trust company hereby for itself and its successors accepts the trust created by the foregoing indenture upon the express understanding and condition that said company and its successors will be responsible only for the exercise of reasonable diligence in the management of said trust, and will not be responsible or liable for the acts of any agent of said company or its successors appointed in good faith in the execution hereof.

In witness whereof this indenture is signed on behalf of said St. Louis Ore and Steel Company by its president and its corporate seal is hereto affixed and attested by its secretary pursuant to resolution of the board of directors of said steel company hereinbefore mentioned, and this indenture is also signed on behalf of said Farmers' Loan and Trust Company by its president and its common seal is hereto affixed and attested by its secretary pursuant to a resolution of its board of directors, this — day of ——, 1882.

[SEAL.] ST. LOUIS ORE AND STEEL COMPANY,
By E. A. HITCHCOCK, *President.*

Attest: O. L. GARRISON, *Secretary.*

[SEAL.] THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

Attest: W. H. LEUPP, *Secretary.*

92 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered, that on this eighth (8th) day of May, in the year of our Lord eighteen hundred and eighty-two, before me the undersigned, a notary public within and for the city of St. Louis, State of Missouri (duly commissioned and qualified as such for a term which will expire on the 28th day of June, A. D. 1885), at the said city of St. Louis, State aforesaid, personally appeared Ethan A. Hitchcock, who is to me personally known to be the same person whose name is subscribed to the foregoing instrument as president of the St. Louis Ore and Steel Company, party thereto, and as having executed the said instrument in behalf of the said corporation, and the said Ethan A. Hitchcock, being by me first duly sworn, did depose and say: That he is the president of said St. Louis Ore and Steel Company, and that as such president he signed the foregoing indenture for and on behalf of said company; that the seal to said indenture, affixed and attested by the signature of O. L. Garrison as secretary of said company, is the common seal of said St. Louis Ore and Steel Company; that said Oliver L. Garrison is the secretary of said company, and said signature is the genuine signature of said Garrison; that the said seal was affixed to said instrument and attested by the said secretary in deponent's presence, and that the said indenture was thus executed and is by this deponent acknowledged and delivered for and on behalf of the said St. Louis Ore and Steel Company as and for the free and voluntary act and deed of said

corporation for the uses and purposes therein expressed, and pursuant to a resolution of the board of directors of said company, duly adopted as in said instrument set forth.

E. A. HITCHCOCK.

93 Sworn to and subscribed before me, the said undersigned notary public, at St. Louis aforesaid, this eighth day of May, A. D. 1882.

In witness whereof, and of the acknowledgment aforesaid, I, the said notary public undersigned, do hereunto set my hand and affix my seal of office as such notary public, at office in the said city of St. Louis, State of Missouri, this 8th day of May, A. D. 1882.

[SEAL.] FRANK OBEAR,
Notary Public within and for the City of St Louis, State of Missouri.

STATE OF NEW YORK,
County of New York, City of New York, } ss.:

Be it remembered that on this tenth day of May, A. D. 1882, before me, the undersigned, Edwin F. Corey, a notary public, within and for the city, county and State of New York, duly commissioned and qualified as such for a term which will expire on the 30th day of March, A. D. 1883, at said city, county and State of New York, personally appeared Rosewell G. Rolston, who is to me personally known to be the same person whose name is subscribed to the foregoing instrument as president of the Farmers' Loan and Trust Company, party thereto, and as having executed the said instrument in behalf of said corporation, and the said Rosewell G. Rolston being by me first duly sworn did depose and say, that he is the president of said The Farmers' Loan and Trust Company, and that as such president he signed the foregoing indenture for and on behalf of said company, that the seal to said indenture affixed and attested by the signature of Wm. H. Leupp as secretary of said com-
94 pany, is the common seal of said The Farmers' Loan and Trust Company; that said Wm. H. Leupp is the secretary of said company, and said signature is the genuine signature of said Leupp; that the said seal was affixed to said instrument and attested by said secretary, in deponent's presence, and that the said indenture was thus executed, and is by this deponent acknowledged and delivered for and on behalf of the said The Farmers' Loan and Trust Company as and for the free and voluntary act and deed of said corporation, for the uses and purposes therein expressed, and pursuant to authority in him vested, by the said The Farmers' Loan and Trust Company.

R. G. ROLSTON.

Sworn to and subscribed before me, the said undersigned, notary public, at New York aforesaid, this tenth day of May, A. D. 1882.

In witness whereof, and of the acknowledgment aforesaid, I, the said notary public, undersigned, do hereunto set my hand and affix

my seal of office as such notary public, at office, in the said city of New York, this 10th day of May, A. D. 1882.

[SEAL.] EDWIN F. COREY,
Notary Public within and for the City and State of New York.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned recorder of deeds, certify that the foregoing instrument of writing was filed for record in my office May 13th, 1882, at 12.46 p. m., and is truly recorded in Book 680, page 34.

Witness my hand and official seal, date aforesaid.

C. W. IRWIN, *Recorder.*

95 STATE OF MISSOURI, } ss:
County of St. Francois, }

IN THE RECORDER'S OFFICE.

I, John C. Alexander, recorder of said county, do hereby certify that the within instrument of writing was, on the 22d day of May, A. D. 1882, at — o'clock — m., duly filed for record in this office and is duly recorded in the records of this office in Book "Y," at pages 1 to 38, inclusive.

In witness whereof, I have hereunto set my hand and affixed my official seal, at office, in Farmington, this 1st day of June, A. D. 1882.

[Copy of Seal: Circuit Court Seal, St. Francois Co., Missouri.]

JOHN C. ALEXANDER, *Recorder,*
By THOS. H. STAM, *Deputy.*

96 EXHIBIT "C."

Grand Tower and Carbondale railroad to Henry Hitchcock *et al.*

This indenture, made and entered into this first day of October, A. D. 1883, by and between the Grand Tower and Carbondale Railroad Company, a corporation duly created and organized under the laws of the State of Illinois, and hereinafter referred to as the said railroad company or the said party of the first part, and Henry Hitchcock, of the city of St. Louis, State of Missouri, and Robert M. Olyphant, of the city of New York, State of New York, hereinafter referred to as said trustees or said party of the second part.

Witnesseth, that whereas said railroad company by the unanimous vote of all of its stockholders at a meeting of said stockholders held on the 22d day of September, A. D. 1883, and by a vote of all of the directors of said company at a meeting of said directors held on the day last above mentioned, has determined to issue its bonds to the number of seven hundred, numbered from one to seven hundred inclusive. The first five hundred of which will be of the denomination of one thousand dollars each, and the remaining two hundred thereof of the denomination of five hundred dollars each,

all of which will be made to become due and payable twenty years after the date thereof (October 1st, 1883) to bearer, or if registered, to the registered owner or holder thereof, and all of which will bear interest at the rate of seven per centum per annum, payable semi-annually in each year at the office of Drexel, Morgan & Co., No. 25 Wall street, in the city of New York, at which office the principal sums of each of said bonds is to be payable, and each of which seven hundred bonds is to be duly executed by and under the seal of said railroad company by its presi-
97 dent, attested by its secretary, and to have coupons or interest warrants attached thereto, authenticated by the engraved signature of John Stephens, Jr., treasurer of said railroad company, and upon each of which said bonds after being so signed, sealed and authenticated, is to be certificate of identification of said trustees, the parties of the second part, and the payment of which principal and interest of each of said bonds is to be guaranteed by the St. Louis Ore and Steel Company by the written or printed guarantee indorsed on each of said bonds and signed by said St. Louis Ore and Steel Company, by its president in pursuance of a resolution adopted by the board of directors of said company on the — day of ——, 1883.

Now therefore, this indenture further witnesseth: That the said party of the first part for and in consideration of one dollar to it in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of said bonds and each of them, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, as trustees, and in trust and to the survivor of them in said trust, all the estate, right, title, interest, claim and demand whatsoever as well in law as in equity of the said party of the first part, in and to all and singular the railroad buildings, franchises, plant, telegraph lines, rolling stock, steamboats, barges, flats or other stock fixtures and other property, and also all stock fixtures and other property which may be added to or substituted for any or all of the stock fixtures or other property above mentioned, now belonging to or hereafter acquired and held by said party of the first part, in Jackson county, Illinois, to have and to hold the same, all of the above-described prop-
98 erty and appurtenances unto said parties of the second part and the survivor of them forever, to the only proper use, benefit and behoof of the said parties of the second part and the survivor of them, in trust, nevertheless, for the equal *pro rata* benefit and security of all and every of the persons or corporations who may become owners and holders of any of the above-mentioned bonds, without any preference or priority of any one bond over another or by reason of priority in time of issue, or by negotiation thereof or otherwise, and for the uses and purposes herein declared and expressed.

And it is hereby agreed and declared that the aforesaid described premises, rights, interests, franchises and property hereby conveyed

and mortgaged, or intended so to be, are to be held by said trustees, or the survivor of them, upon and for the trusts, uses, and purposes and conditions following, to wit:

That if the said party of the first part shall well and truly pay, or caused to be paid, to the owner and holder or holders of each and every of said bonds the principal sums of money therein mentioned, according to the true intent and meaning thereof with interest thereon according to the terms and conditions thereof, and of the interest coupons thereto attached, then, and in that case, the lien or encumbrance hereby created for the security and payment thereof, and all the estate, right, title and interest of said parties of the second part in the property aforesaid shall cease and determine, and at the request of the said party of the first part, or its assigns, this mortgage or deed of trust shall be satisfied and discharged, and a release and satisfaction thereof shall be entered of record in the proper office wherein this indenture shall have been recorded at the cost of the said party of the first part.

99 Until default shall be made by the said party of the first part in the payment of principal or interest of the said bonds above mentioned, or either or any of them, or some part of either principal or interest as herein provided, the said party of the first part shall possess, control, manage, operate, use and enjoy the said railroad, buildings, franchises, plant, telegraph lines, rolling stock, steamboats, barges, flat-boats, other stock fixtures and property described and referred to herein, and shall receive, take and use the rents, incomes, profits and tolls thereof for its own uses and purposes as if this indebtedness had not been made.

But in case default shall be made in the payment of any interest on any of the aforesaid bonds according to the tenor and effect thereof, or if the coupons thereto attached or in the payment of the principal of any of said bonds when due, and if such default shall continue for the period of six months after demand made for payment of the same at the office at which said principal and interest is made payable as provided for in said bonds, it shall be lawful for the said trustees, or for the survivor of them in this trust, to, by themselves, or himself, attorneys or agents, to enter in and upon and to take possession of all and singular, the railroad, buildings, franchises, and other property hereinbefore described and mortgaged, or intended so to be, and each and every part thereof, and to exclude the said party of the first part, and its agents, wholly therefrom, and until the said property hereby conveyed can be sold hereunder, as next hereinafter provided for, to maintain and operate said railroad by them or their agents, attorneys or employés, in that behalf, and to collect and receive the income, tolls and profits thereof, and the same to apply to the necessary operation and maintenance of said railroad by and through such agents and employés as shall be reasonably necessary therefor, any surplus of which re-

100 ceipts and profits to be by said trustees, or surviving trustee, added to and applied in like manner with the proceeds of sale hereinafter mentioned; and it shall further be lawful for and the duties of said trustees, or the survivor of them, with all reasona-

ble and convenient speed, to sell and dispose of all and singular, the said property hereinbefore described at public auction to the highest bidder at such time and place in the city of Grand Tower, Jackson county, Illinois, as the said trustees, or the survivor of them in this trust may designate, having first given public notice of the time, place and terms of sale, and of the property to be sold, by advertisements published not less than once in each week for four successive weeks, in some newspaper published in said Jackson county, in the State of Illinois, and in one or more newspapers published in the city of St. Louis, in the State of Missouri, with the right to adjourn such sale or sales from time to time in the discretion of said trustees, or the survivor of them, giving reasonable notice of such adjournment, and after so adjourning to make the sale at the time and place to which the same may be adjourned, and on the consummation of the sale, upon the terms and conditions thereof, to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in law for the absolute and perfect conveyance of all and every part of said property hereby mortgaged, or intended so to be, which sale, made as aforesaid, shall be a perpetual bar, both at law and in equity, against the said party of the first part and all other persons lawfully claiming, or to claim, the said property or any part thereof so sold, by, from, through or under it. And after deducting from the proceeds of such sale just allowances for all expenses of such sale, including attorney's and counsel's fees, and all other expenses, advances and liabilities which may have been made or incurred by the said trustees, or the survivor of them in this trust, op-
101 erating said railroad or in maintaining the same, or in managing its business, and in preserving and taking due care of the other property mortgaged, as aforesaid, while in the possession thereof, as well as reasonable compensation for their or his own services. Then to apply said proceeds to the payment of the principal of such of the aforesaid bonds as may be at such time unpaid, whether the same shall have previously become due or not, and if the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but ratably to the aggregate of said unpaid principal and unpaid interest accrued added together, and after satisfaction of all said bonds secured hereby with interest thereon, to pay over the surplus of such proceeds, if any, to the said party of the first part, or to such party as may be then entitled to receive the same.

In case of any foreclosure sale or of any sale made under the provisions of this mortgage or deed of trust, the foreclosers or purchasers thereof shall be entitled, in making settlement for and payment of the purchase-money therefor, to deliver to the trustee or trustees or other person making said sale, towards the payment of such purchase-money, any of the said bonds and interest coupons secured hereby and held by such purchasers, counting such bonds and interest coupons for such purpose at a sum not exceeding that which shall be payable out of the net proceeds of such sale, to the owner and holder or holders of such bonds and interest coupons as

his or their share and proportion of such net proceeds of sale, after allowing for the proportion of payment which may be required in cash for the costs and expenses of the sale, and which proportion of cash payment shall be determined and announced by said trustees or *or* trustee or other person previous to any such sale, and if such proportionate sum shall be less than the amount of such
102 bonds or interest coupons, to make such settlement by receipting thereon, the amount to be credited thereupon.

In testimony whereof, the Grand Tower and Carbondale Railroad Company, the said party of the first part, has caused its corporate name to be hereunto signed by the president, and the corporate seal attested by its secretary to be hereunto affixed; and Henry Hitchcock and Robert M. Olyphant, trustees, the said parties of the second part have signified acceptance of the trusteeship herein created by hereunto subscribing their names and affixing their respective seals the day and year first above written.

[CORPORATE SEAL.] GRAND TOWER AND CARBONDALE RAILROAD COMPANY,
By THOMAS M. WILLIAMSON,
President.

HENRY HITCHCOCK, [SEAL.]
ROBERT M. OLYPHANT, [SEAL.]
Trustees as Aforesaid.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Morrison Renshaw, a notary public within and for said city, do hereby certify that Thomas M. Williamson, president of the Grand Tower and Carbondale Railroad Company, party of the first part to the foregoing instrument, and personally known to me to be the same person who subscribed the name of the aforesaid corporation to the said instrument, appeared before me this day in person and acknowledged that he as such president signed, sealed and
103 delivered the said instrument as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of September, 1883.

[NOTARIAL SEAL.] M. RENSHAW,
Notary Public.

STATE OF NEW YORK, } ss:
City and County of New York, }

On this 5th day of October, A. D. 1883, before me Charles Edgar Mills, a commissioner for the State of Illinois, in and for the State of New York, residing in said city of New York, personally appeared, Robert M. Olyphant, who is personally known to me to be the real person whose name is subscribed to the foregoing instrument and acknowledged that he had signed, sealed and delivered the said instrument as his free act and deed for the uses and purposes therein expressed.

[COMMISSIONER'S SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal, this 5th day of October, A. D. 1883.

CHARLES EDGAR MILLS,
Commissioner for Illinois in New York,
115 & 117 *Broadway, New York City.*

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Henry Hitchcock, Jr., a notary public for the city of St.
104 Louis aforesaid, do hereby certify that Henry Hitchcock personally known to me to be the same person whose name is subscribed to the foregoing instrument, as having executed the same, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes set forth.

[NOTARIAL SEAL.] Given under my hand and seal, official, at my office, in said city of St. Louis, State of Missouri, aforesaid, this tenth day of October, A. D. 1883.

HENRY HITCHCOCK, JR.,
Notary Public.

Filed for record — Nov., 1883.

C. B. DISHON, *Recorder.*

STATE OF ILLINOIS, }
Jackson County, } *ss:*

I, C. B. Dishon, clerk of the circuit court and *ex officio* recorder of deeds, &c., of Jackson county, State of Illinois, do hereby certify that the foregoing is a true copy of mortgage or deed of trust, given by the Grand Tower and Carbondale Railroad Company to Henry Hitchcock *et al.*, as the same appears of record in Book "C," of Miscellaneous Records, said Book "C" being one of the books of record of said Jackson county, Illinois.

In witness whereof, I have hereunto set my hand and affixed the seal of office, at Murphysboro', this 10th day of March, A. D. 1883.

[SEAL.] C. B. DISHON,
Clerk and Recorder.

105 EXHIBIT "D."

This indenture, made and entered into on this first day of May, in the year of our Lord one thousand eight hundred and eighty-four, by and between the St. Louis Ore and Steel Company, a manufacturing and business corporation organized under the laws of the State of Missouri (hereinafter designated as the "steel company"), party of the first part, and Robert M. Olyphant, of the city of New York, and State of New York, and Henry Hitchcock, of the city of St. Louis, and State of Missouri, as trustees, as hereinafter mentioned, parties of the second part (said parties of the second part being hereinafter referred to as "said trustees"), witnesseth:

Whereas, at a special meeting of the shareholders of said steel company, held at the chief office of said company in the city of St. Louis, Missouri, on the 11th day of March, A. D. 1884, pursuant to notice of the time and place of such meeting, and of the amount of proposed increase of bonded indebtedness of said steel company, given as required by law, there was obtained the consent of the persons holding the larger amount in value of the capital stock of said steel company then issued and outstanding to a proposed increase of the bonded indebtedness of said steel company, to wit: by the unanimous adoption by the votes of the shareholders present and represented at said meeting (being the persons holding the larger amount in value of said capital stock) of certain resolutions, hereafter more fully set forth, by which resolutions said shareholders did consent to and authorize the increase of the bonded indebtedness of said steel company by its guarantee of certain bonds of the Grand Tower and Carbondale Railroad Company, in said
106 resolutions particularly mentioned, to the amount of six hundred thousand dollars ($600,000), and did authorize and request the president and board of directors of said steel company, for the purpose of further securing the payment of the principal and interest of said bonds, to cause to be executed, acknowledged and delivered, in behalf and under the common seal of said steel company, a second mortgage or deed of trust upon such of the lands, tenements and property of said steel company situate in the States of Missouri and Illinois, as to the said board of directors might seem expedient, as will more fully appear from the recitals contained in the resolutions adopted by the directors of said steel company as hereinafter set forth, and by reference to the records of said steel company.

And whereas, at a meeting of the directors of said St. Louis Ore and Steel Company held at the office of said company in the city of New York, on the sixteenth day of April, A. D. 1884, upon due notice, a quorum of said board of directors being present, certain resolutions were unanimously adopted by said board of directors which were in the words and figures following, that is to say:

"Whereas, a special meeting of the shareholders of the St. Louis Ore and Steel Company was held at the principal office of said company in St. Louis, Missouri, at nine o'clock in the forenoon, on Tuesday March 11, 1884, which meeting was called and held upon more than sixty days' previous notice thereof by advertisement, as required by law, for the purpose of considering a proposition to authorize an increase of the bonded indebtedness of said company;

"And whereas, from the returns made and certified by the inspectors of election duly appointed for said meeting, which returns have been laid before this board, approved and ordered to be
107 filed, it appears that at said special meeting of shareholders, there were present and represented the persons holding the larger amount in value of the entire capital stock of this company outstanding, and that at said meeting all the persons so present in person, or by proxy, unanimously adopted the following preamble and resolution, that is to say:

"Whereas, the Grand Tower and Carbondale Railroad Company has executed under its corporate seal, attested by its secretary, its certain bonds dated, respectively, the first day of October, A. D. 1883, said bonds being numbered from one (1) to seven hundred (700), the principal thereof amounting in all to ($600,000) six hundred thousand dollars, payable (20) twenty years from said date, to each of which bonds coupons are attached for interest payable semi-annually, at the rate of seven per cent. per annum, said bonds being secured by a mortgage deed of trust upon the franchises and property of the said railroad company in Jackson county, Illinois, dated October 1st, A. D. 1883, and recorded in the office of the recorder of deeds of said Jackson county, in Book 'C,' of Miscellaneous Records, on page — thereof; and,

"Whereas, said bonds, issued in pursuance of resolutions unanimously adopted by all the stockholders of said railroad company at a meeting thereof, held on September 22d, 1883, and by the board of directors thereof, at a meeting of said board held on said day, have been delivered by authority of said railroad company to the president of the St. Louis Ore and Steel Company, to be negotiated and used for the benefit of said company last named, the said St. Louis Ore and Steel Company in consideration thereof to guarantee to the holders of said bonds the payment of the principal and interest to become due thereon; and,

108 "Whereas, in pursuance of resolutions adopted by the board of directors of this company at its meeting held in the city of New York on the 2d day of November, A. D. 1883, this company by its president hath guaranteed the payment of the principal and interest of the said seven hundred bonds by an agreement in writing endorsed on each of said bonds; and

"Whereas, in order to facilitate the negotiation of said bonds for the benefit of this company it is proposed to further secure the same by a second mortgage deed of trust, to be executed by this company on its lands and property situate in the States of Illinois and Missouri, or such portions thereof as the board of directors of this company may deem expedient, be it therefore,

"Resolved that the shareholders of the St. Louis Ore and Steel Company present and represented at this meeting, called for that purpose, being the holders of the larger amount in value of the entire capital stock of said company, do hereby consent to and authorize the increase of the bonded indebtedness of said company by its said guarantee of said bonds of said Grand Tower and Carbondale Railroad Company to the amount of ($600,000) six hundred thousand dollars, together with interest to accrue thereon as above stated, and do hereby approve and ratify the said action of said board of directors of this company at their said meeting held on November 2d, 1883, and of the president of the company in pursuance thereof, and further,

"Resolved that the president and board of directors of this company are hereby authorized and requested for the purpose of further securing the payment of the principal and interest of the said seven

hundred bonds so issued by said Grand Tower and Carbon-
109 dale Railroad Company to cause to be executed, acknowledged and delivered in behalf and under the common seal of the company a second mortgage or deed of trust, whereby shall be conveyed upon such suitable trusts and conditions, and with such powers of entry, foreclosure and sale as they may be advised, all or such of the lands, tenements and property of this company situate in said States of Missouri and Illinois, as to the said board of directors may seem expedient.

"Be it therefore resolved, That the president of this company is hereby authorized and instructed for the purpose of further securing the payment of the principal and interest of the said seven hundred bonds issued by said Grand Tower and Carbondale Railroad Company, and guaranteed by this company, as mentioned in the said resolutions adopted at said shareholders' meeting, on March 11th, 1884, to execute, acknowledge and deliver in behalf and under the common seal of this company, attested by its secretary, to Robert M. Olyphant and Henry Hitchcock, as trustees, for the benefit of the holders of said bonds respectively, a second mortgage or deed of trust whereby shall be conveyed to said trustees (subject, nevertheless, to the lien of the mortgage deed of trust heretofore authorized and executed by this company to the Farmers' Loan and Trust Company of New York, under date of May 3d, A. D. 1882), all and singular those certain lands and tenements, together with all buildings, fixtures and improvements thereon and appurtenant thereto; that is to say:

"First. All and singular those certain lands heretofore belonging to the Pilot Knob Iron Company and by it transferred to said St. Louis Ore and Steel Company by the articles of consolidation and association thereof, lying and being situate in the State of Missouri, elsewhere than in the city of St. Louis, to wit: in the coun-
110 ties of Jefferson, Madison, St. Francois and Iron, together with all and singular, the ores and minerals upon or in said lands, and all mines and mining works in progress, all blast and other furnaces, buildings, constructions, fixtures, tramways, railways and other improvements, constructed or to be constructed thereon, and all appurtenances, rights and privileges thereunto appertaining; also,

"Second. All and singular those certain lots and tenements lying and being situate in the county of Jackson and State of Illinois, formerly belonging to the Grand Tower Mining, Manufacturing, and Transportation Company, and being the same lands acquired by said St. Louis Ore and Steel Company by deed of David Dows and wife and Le Grand B. Cannon, dated March 25th, A. D. 1882, recorded in the recorder's office of said Jackson county, in Book 19 of Deeds, at page 5 and following:

"The said conveyance to be made upon such suitable trusts and conditions for the purpose aforesaid, and with such powers of entry, foreclosure and sale as may be advised by the counsel of this company; provided that a draft or form of such proposed second mortgage deed of trust shall be submitted before the execution and

delivery thereof, to the board of directors of this company, elected at the annual meeting thereof, held on the 13th day of March, A. D. 1884."

And whereas, in pursuance of the said resolutions last above mentioned, the president of the said steel company, party of the first part, caused a draft or form of a certain mortgage or deed of trust, such as authorized by said resolutions, to be prepared by the counsel for said company, which draft or form of second mortgage deed of trust was submitted to the board of directors of said
111 company elected at the annual meeting thereof held on the 13th day of March, A. D. 1884, to wit: at a meeting of said board of directors held in the city of New York on due notice, a quorum being present on the 16th day of April, A. D. 1884, at which meeting was unanimously adopted by the said board of directors a resolution in the words and figures following, to wit:

"Resolved, That the draft or form of second mortgage deed of trust prepared by the counsel for this company, and this day submitted to this board by the president in accordance with the resolution adopted by the board of directors of this company at its meeting held on the 16th day of April, A. D. 1884, be and the same is hereby approved, and the president and secretary of this company are hereby authorized and directed to execute and deliver on behalf and under the seal of this company a second mortgage deed of trust in form and provisions corresponding thereto for the purposes set forth in the said resolutions adopted at said directors' meeting last mentioned."

In pursuance of which last-mentioned resolution this instrument has been prepared in form and provisions as thereby authorized, and is executed and delivered accordingly.

And whereas, the Grand Tower and Carbondale Railroad Company, a railroad corporation organized and existing in Jackson county, State of Illinois, under the laws of said State, hath, by the proper officers thereof executed its seven hundred certain bonds, amounting in all to the principal sum of ($600,000) six hundred thousand dollars, dated October 1st, 1883, said bonds being payable respectively twenty years after said date at the office of Drexel, Morgan & Company, No. 25 Wall street, in the city of New
112 York, with coupons attached for semi-annual interest thereon at the rate of seven per cent. per annum, being the same bonds mentioned in and secured by a certain mortgage deed of trust from said Grand Tower and Carbondale Railroad Company to Henry Hitchcock and Robert M. Olyphant, as trustees, dated October 1st, 1883, recorded in Book "C," miscellaneous records, in the office of the recorder of deeds of said Jackson county, State of Illinois, to which mortgage and the said record thereof express reference is hereby made for all things therein contained.

And whereas, the said steel company, party of the first part, by its president, thereunto authorized by resolutions adopted by the board of directors of said steel company on the second day of November, A. D. 1883, hath guaranteed the payment of the principal and interest of the said seven hundred bonds above mentioned by

an agreement in writing endorsed on each of said bonds, in consideration whereof the said seven hundred bonds have been delivered to said steel company, to be negotiated and used for the benefit thereof, which agreement and guarantee by said steel company hath been approved by the shareholders thereof as hereinafter set forth.

Now therefore, these presents witness that in consideration of the premises and of the consent and authority aforesaid so given by the persons holding the larger amount in value of the capital stock of the said steel company, party of the first part, and in pursuance of said resolutions so adopted by the board of directors of said steel company at the meeting of said board held on the 16th day of April, A. D. 1884, as aforesaid, and in consideration of the sum of one dollar to it paid by said parties of the second part, receipt whereof is hereby acknowledged, and of the acceptance by said par-
113 ties of the second part of the trusts hereinafter declared, the said St. Louis Ore and Steel Company hath granted, bargained and sold, and doth by these presents grant, bargain and sell, convey and confirm unto them, the said parties of the second part, all and singular the following lands and tenements, situated partly in the State of Missouri and partly in the State of Illinois, as hereinafter set forth, together with all buildings, fixtures and improvements thereon, and all rights and privileges thereunto in anywise appertaining, that is to say:

First. All and singular those certain lands heretofore belonging to the Pilot Knob Iron Company and by it transferred to said St. Louis Ore and Steel Company by the articles of association and consolidation thereof, lying and being situate in the State of Missouri, elsewhere than in the city of St. Louis, to wit: in the counties of Jefferson, Madison, St. Francois and Iron, respectively, as hereinafter particularly set forth and described, together with all and singular the ores and minerals upon or in said lands and all mines and mining works in progress, all blast and *and* other furnaces, buildings, constructions, fixtures, tramways, railways, and other improvements constructed or to be constructed thereon, and all appurtenances, rights and privileges thereunto appertaining, the said lands in the State of Missouri, being more particularly describe as follows:

In the county of Jefferson—

The undivided one-half of all the lands lying between the center line of the St. Louis, Iron Mountain and Southern railway and the Mississippi river extending from the northern boundary line of the river front of the land belonging to the estate of Sander Burgess at the time of his death, southwardly to the passway built on said railway, just south of the house occupied in 1859 by James Burgess, Junior, and a strip (100) one hundred feet wide on the west
114 side of said center line, and of the same extent from north to south, and from said passway to the south line of said river front, reserving for the use of said railroad a strip (70) seventy feet wide, lying on the west of said center line, and a strip 30 feet wide on the east of said center line, being the same and all the lands conveyed by Thomas Burgess and others to American Iron

Mountain Company and the Pilot Knob Iron Company by deed, dated July 13th, 1859, and recorded in Book "P," at page 500, of the records of said Jefferson county; also,

The undivided one-half of a tract of land conveyed to said American Iron Mountain Company and said Pilot Knob Iron Company, by Thomas Burgess, Junior, by deed, dated July 13th, 1859, and recorded in Book "P," page 561 of said Jefferson county records, and therein described as all that portion of the tract on which said Burgess then resided, lying between the center line of the St. Louis and Iron Mountain railroad and the Mississippi river, extending from the north line to the south line of said tract, and a strip of ground (50) fifty feet wide and adjoining said center line on the west, and extending from said north line to said south line.

In the county of Madison—

The following tracts or parcels of land in township (33) thirty-three, north of range (5) five east, to wit:

The south half of the southwest quarter of section (3) three, containing (80) eighty acres.

Lot number (5) five of the northwest quarter of section (4) four, containing (80) eighty acres.

115 Lot number (2) two of the southwest quarter of section (6) six, containing (99.66) ninety-nine and sixty-six hundreths acres.

The northwest quarter of the northwest quarter of section ten (10), containing (40) forty acres.

Also the following tracts or parcels of land in township (34) thirty-four north of range (5) five east, in said county of Madison, and State of Missouri, to wit:

The south half of the northeast quarter and the south halves of lots (1 and 2) one and two, of the northwest quarter of section (19) nineteen, containing in the aggregate (154.21) one hundred and fifty-four and twenty-one one-hundredths acres.

The southwest quarter of the northwest quarter of section twenty (20), containing forty (40) acres.

The northwest quarter of the southeast quarter, the southwest quarter of the northeast quarter, and the south halves of lots (1 and 2) one and two of the northwest quarter, all in section thirty (30), containing in the aggregate (156) one hundred and fifty-six acres.

The north half of the southeast quarter, and the northeast quarter of the southwest quarter of section thirty-two (32), containing (120) one hundred and twenty acres.

The northwest quarter of the southwest quarter of section (33) thirty-three, containing (40) forty acres.

In the county of St. Francois—

Also the following tracts and parcels of land in St. Francois county, in said State of Missouri, and in township (34) thirty-four north range (4) four east.

116 The south half of section (1) one, containing (320) three hundred and twenty acres; lot one (1) of the northeast quarter, and the east half of lot (1) one of the northwest quarter of

said section (1) one, containing in the aggregate (120) one hundred and twenty acres.

Fractional sections seven (7), eight (8) and nine (9), containing in the aggregate (29.18) twenty-nine and eighteen one-hundredths acres.

The southwest quarter of section (10) ten, containing (127) one hundred and twenty-seven acres. The southwest quarter of the northwest quarter of section (12) twelve, containing in the aggregate (166.11) one hundred and sixty-six and eleven one-hundredths acres.

The west half of the northeast quarter, the south half and northwest quarter of the northwest quarter, and the south half of section (13) thirteen, containing in the aggregate (520) five hundred and twenty acres.

The southeast, southwest and northwest quarters of section (14) fourteen, containing in the aggregate (480) four hundred and eighty acres.

The east half and southwest quarter of the southeast quarter, the east half and northwest quarter of the northeast quarter, the north half and southwest quarter of the northwest quarter, and the southeast quarter of the southwest quarter of section (15) fifteen, containing in the aggregate ($424\frac{7}{100}$) four hundred and twenty-four and seven one-hundredths acres.

117 The west half of the northeast quarter and the northeast quarter of the southwest quarter of section (16) sixteen, containing in the aggregate (120) one hundred and twenty acres.

All of section (17) seventeen, containing (681.41) six hundred and eighty-one and forty-one one-hundredths acres, the east half and southwest quarter of the southwest — and the northeast and southeast quarters of section (18) eighteen, containing in the aggregate (440) four hundred and forty acres.

Also the following tract or parcel of land in said St. Francois county and in township (34) thirty-four north, range (5) five east.

The south half of lot (2) two of the southwest quarter of section (18) eighteen, containing (40) forty acres.

Also the following tracts or parcels of land in said St. Francois county, in township (35) thirty-five north, range (4) four east, viz:

The southwest quarter of the northeast quarter of section (25) twenty-five, containing (40) forty acres.

The east half of section (36) thirty-six, containing (320) three hundred and twenty acres.

Also the following-described tract or parcel of land in said St. Francois county, and in township (35) thirty-five north, range (5) five east, to wit:

Lot (2) two of the southwest quarter of section (31) thirty-one, containing (101.64) one hundred and one and sixty-four one-hundredths acres.

118 In the county of Iron—

Also the following-described tract or parcel of land in the

county of Iron, in said State of Missouri and in township (32) thirty-two north, range (3) three east, to wit:

The east half of lot (2) two of the northwest quarter of section (1) one, containing (40) forty acres.

Also the following-described tracts or parcels of land in said county of Iron and State of Missouri, and in township (32) thirty-two north, range (4) four east, to wit:

The west half of lot one of the northeast quarter, the east half of lot one of the northwest quarter, and the northeast quarter of the southwest quarter of section one, containing in the aggregate (120) one hundred and twenty acres.

Also the following-described tracts or parcels of land in said county of Iron and State of Missouri, and in township (33) thirty-three north, range (3) three east, to wit:

The south half of the southeast quarter: lot (4) four of the northeast quarter, lots (3) three and (4) four and the west half of lot one of the northwest quarter, and the south half of the southwest quarter of section (1) one, containing in the aggregate (529.46) five hundred and twenty-nine and forty-six one-hundredths acres.

Lots (1) one, (4) four, (5) five and (6) six of the northeast quarter; lots (1) one, (2) two, (3) three, (4) four and (5) five of the northwest quarter, and the south half of section (2) two, containing in the aggregate (1,039.43) one thousand and thirty-nine and forty-three one-hundredths acres.

119 Lots (1) one, (2) two, (3) three, (4) four and (5) five and the west half and southeast quarter of lot (6) six of the northeast quarter; lots (1) one, (2) two, (3) three and (4) four, and the east halves of lots (5) five and 6 of the northwest quarter and the south half of section (3) three, containing in the aggregate (1,234.61) twelve hundred and thirty-four and sixty-one one-hundredths acres.

Lots (1) one, (2) two, (3) three and (4) four and the west halves of lots (5) five and (7) seven of the northeast quarter; lots (1) one, (2) two, (3) three, (4) four, (5) five, (6) six and (7) seven of the northwest quarter, and the south half of section four, containing in the aggregate $1,317\frac{6}{100}$) thirteen hundred and seventeen and six one-hundredths acres.

The east halves of lots (1) one, (2) two, (4) four, (5) five and (6) six, the west halves of lots (6) six and (8) eight, and all of lot (7) seven of the northeast quarter, the west halves of lots (2) two and (3) three, and all of lots (6) six and (7) seven of the northwest quarter, the northwest quarter of the southeast quarter, and all of the southwest quarter of section (5) five, containing in the aggregate (783.89) seven hundred and eighty-three and eighty-nine one-hundredths acres.

The east half and southwest quarter of the southeast quarter, lots (2) two and (3) three and the west half of lot (6) six of the northeast quarter, the east halves of lots (2) two and (3) three, and the west halves of lots (6) six and (7) seven of the northwest quarter, and the south half of lot 1 of the southwest quarter of section (6) six, con-

taining in the aggregate (565.98) five hundred and sixty-five and ninety-eight one-hundredths acres.

The southeast quarter, the southwest quarter of the north-
120 east quarter, lot (1) one of the northwest quarter and lot (1) one and the north half of lot (2) two of the southwest quarter in section 7, containing in the aggregate (400) four hundred acres.

The southeast quarter of the southeast quarter, the northeast quarter and the east half of the northwest quarter of section (8) eight, containing in the aggregate (280) two hundred and eighty acres.

The north half and southeast quarter of the southeast quarter, the northeast quarter of the southwest quarter and the north half of section (9) nine, containing in the aggregate (480) four hundred and eighty acres.

The northeast quarter of the southeast quarter, the east half and northwest quarter of the northeast quarter, the west half and northeast quarter of the northwest quarter, and the southwest quarter of section (10) ten, containing in the aggregate (440) four hundred and forty acres.

The southwest quarter of the southeast quarter, the south half of the northeast quarter, the northwest quarter of the southwest quarter, and all of the northwest quarter of section (11) eleven, containing in the aggregate (310.41) three hundred and ten and forty-one one-hundredths acres.

The north half of the southeast quarter, the south half of the northeast quarter, the north half of the southwest quarter, and all of the northwest quarter of section (12) twelve, containing in the aggregate (382.78) three hundred and eighty-two and seventy-eight one-hundredths acres.

The east half of section (13) thirteen, containing (312.96) three hundred and twelve and ninety-six one-hundredths acres.

121 The northwest quarter of the southwest quarter and all of the northwest quarter of section (15) fifteen, containing in the aggregate (200) two hundred acres.

The east half of the southeast quarter, the southeast and southwest quarters of the northeast quarter, the northwest quarter of the northeast quarter, the west half of the northeast quarter of the northeast quarter, and the north half and southeast quarter of the northwest quarter of section (17) seventeen, containing in the aggregate (340) three hundred and forty acres.

The east half of the southeast quarter, the southwest quarter of the southeast quarter, the northeast quarter, the south halves of lots (1) one and (2) two of the northwest quarter, and lots (2) two and (3) three of the southwest quarter of section (18) eighteen, containing in the aggregate (493.53) four hundred and ninety-three and fifty-three one-hundredths acres.

The south half of the southeast quarter, the east half of the northeast quarter; lots (2) two and (3) three, and the south half of lot (1) one of the northwest quarter, and lots (1) one, (2) two and (3) three of the southwest quarter of section (19) nineteen, contain-

ing in the aggregate (548.11) five hundred and forty-eight and eleven one-hundredths acres.

The west half and southeast quarter of the southeast quarter, and the west half of section (20) twenty, containing in the aggregate (440) four hundred and forty acres.

The south half of the southeast quarter, the northwest quarter of the northeast quarter, the east half and northwest quarter,
122 of the northwest quarter, and the east half of the southwest quarter of section (21) twenty-one, containing in the aggregate (320) three hundred and twenty acres.

The east half of the northwest quarter of section (22) twenty-two, containing (80) eighty acres.

The east half of section (24) twenty-four, containing (320) three hundred and twenty acres.

The northwest quarter of the northeast quarter, the southwest quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section (28) twenty-eight, containing in the aggregate (120) one hundred and twenty acres.

The east half of section 29 containing (320) three hundred and twenty acres.

The north half of lots (1) one and (2) two of the northwest quarter, the south half of lots (1) one and (2) two of the southwest quarter, and all of the east half of section (30) thirty, containing in the aggregate (480) four hundred and eighty acres.

The west half and northeast quarter of the southeast quarter, the northeast and southwest quarters, and the south half of lots (2) two and (3) three, and all of lot (1) one, of the northwest quarter of section (31) thirty-one, containing in the aggregate (715.84) seven hundred and fifteen and eighty-four one-hundredths acres.

The southwest quarter of the southeast quarter, and the north half of the northwest quarter of section (32) thirty-two, containing in the aggregate (120) one hundred and twenty acres.

123 The southwest quarter of the southeast quarter, and the southeast and northwest quarters of the southwest quarter of section (34) thirty-four, containing in the aggregate (120) one hundred and twenty acres.

Also the following tracts or parcels of land in said Iron county, State of Missouri, and in township (34) thirty-four, north range (3) three east, to wit:

The south half and northwest quarter of the northwest quarter of section (15) fifteen, containing in the aggregate (129.24) one hundred and twenty-nine and twenty-four one-hundredths acres.

The south half and northeast quarter of the southeast quarter, and the south half of the southwest quarter of section (16) sixteen, containing in the aggregate (214.51) two hundred and fourteen and fifty-one hundredths acres.

The southeast quarter, the southwest quarter of the northeast quarter, lots (1) one and (2) two, of the northwest quarter, and lots (1) one and (2) two, of the southwest quarter section (19) nineteen, containing in the aggregate (504.17) five hundred and four and seventeen one-hundredths acres.

The northeast quarter of section (21) twenty-one, containing (171) one hundred and seventy-one acres.

The southwest quarter of the northeast quarter, the south half of the northwest quarter and the south half of section (22) twenty-two, containing in the aggregate (468.15) four hundred and sixty-eight and fifteen one-hundredths acres.

124 The east half of the southeast quarter, saving and excepting therefrom (2.35) two and thirty-five one-hundredths acres, heretofore sold by the Pilot Knob Iron Company to John W. Hancock, by deed recorded in said Iron county, in Book "K," page 328, leaving as the portion of said tract hereby conveyed the quantity of (85) eighty-five acres, the southeast quarter of the northeast quarter and the west half of the west half of section (24) twenty-four, containing in the aggregate (303.89) three hundred and three and eighty-nine one-hundredths acres.

The north half of the southeast quarter, the southeast quarter of the southeast quarter and the east half of the southwest quarter of the southeast quarter, the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section (25) twenty-five, containing in the aggregate (306.85) three hundred and six and eighty-five one-hundredths acres.

The southeast quarter, the east half of the northeast quarter, the north half and southwest quarter of the southwest quarter of section (26) twenty-six, containing in the aggregate (391.37) three hundred and ninety-one and thirty-seven one-hundredths acres.

All of sections (27) twenty-seven and (28) twenty-eight, containing in the aggregate (1,349.62) thirteen hundred and forty-nine and sixty-two one-hundredths acres.

The northwest quarter of the southeast quarter, the southwest quarter of the northeast quarter, lots (1) one and two (2) of the northwest quarter and the north half of lot one of the southwest quarter of section (30) thirty, containing in the aggregate (272.26) two hundred and seventy-two and twenty-six one-hundredths acres.

125 The northwest quarter of the southeast quarter, the northeast quarter, the south half and northeast quarter of the northwest quarter and the north half of the southwest quarter of section (32) thirty-two, containing in the aggregate (407.58) four hundred and seven and fifty-eight one-hundredths acres.

The west half and northeast quarter of the southeast quarter, the northeast quarter and the west half of section (33) thirty-three, containing in the aggregate (625.14) six hundred and twenty-five and fourteen one-hundredths acres.

The west half of the east half and all the west half of section (34) thirty-four, containing in the aggregate (492.91) four hundred and ninety-two and ninety-one one-hundredths acres.

The southeast and northwest quarters, the north half and southwest quarter of the northeast quarter, and the north half of the southwest quarter of section (35) thirty-five, containing in the aggregate (538.22) five hundred and thirty-eight and twenty-two one-hundredths acres.

The east half of the southeast quarter, the northeast quarter and the west half of the southwest quarter of section (36) thirty-six, containing in the aggregate (336_{100}^{1}) three hundred and thirty-six acres and one one-hundredth.

Also the following tracts or parcels of land in said county of Iron and State of Missouri and township (33) thirty-three north, range (4) four east, to wit:

126 The southeast quarter, lots (1) one, (2) two and (5) five of the northwest quarter, and the south half and northeast quarter of the southwest quarter of section (1) one, containing in the aggregate (549.79) five hundred and forty-nine and seventy-nine one-hundredths acres.

The south half and northwest quarter of the southeast quarter, lot (5) five of the northeast quarter, lots (2) two, (3) three, (4) four and (5) five of the northwest quarter, the west half of lot (1) one of said northwest quarter, save and excepting therefrom (4.56) four and fifty-six one-hundredths acres in the southeast corner thereof heretofore sold by the Pilot Knob Iron Company to Andrew Henson by deed recorded in said Iron county, recorded in Book "O," page 275, all in section (2) two and containing in the aggregate (615.13) six hundred and fifteen and thirteen one-hundredths acres.

The east halves of lots (1) one and (5) five of the northeast quarter, the south half of the southwest quarter and all of the east halves of lots (2) two, (3) three and (4) four of the northeast quarter not heretofore sold by said Pilot Knob Iron Company to James Phillips by deed recorded in said Iron county, in Book "F," page 3, all in section (3) three, containing in the aggregate (248.99) two hundred and forty-eight and ninety-nine one-hundredths acres.

Lot (5) five of the northwest quarter of section (6) six, containing (102.70) one hundred and two and seventy one-hundredths acres.

The northeast quarter of the northeast quarter of section (10) ten, containing (40) forty acres.

127 The west half and southeast quarter of the southeast quarter, the northeast and southwest quarters of the northeast quarter, and the west half of the southwest quarter of section (11) eleven, containing in the aggregate (280) two hundred and eighty acres.

The west half and southeast quarter of the southeast quarter, the west half and northeast quarter of the northeast quarter, and the west half of section (12) twelve, containing in the aggregate (560) five hundred and sixty acres.

The north half of the northeast quarter, all of the northwest quarter and the northwest quarter of the southwest quarter of section (13) thirteen, containing in the aggregate (280) two hundred and eighty acres.

The north half of the southeast quarter, the north half and the southwest of the southwest quarter, and the north half of section (14) fourteen, containing in the aggregate (520) five hundred and twenty acres.

The west half of the west half of section (15) fifteen, containing (160) one hundred and sixty acres.

The west half of the northeast quarter, lot one of the northwest quarter, and lots (1) one and (2) two, of the southwest quarter of section (18) eighteen, containing in the aggregate (338) three hundred and thirty-eight acres.

The northwest quarter of the northeast quarter and a part of the southwest quarter of said northeast quarter, containing ($2\frac{7}{100}$) two and seven one-hundredths acres, and described as follows: Beginning at the northeast corner of said quarter, and running thence west (5.50) five and fifty one-hundredths chains; thence south (2) two chains; thence south ($77\frac{1}{2}$) seventy-seven and one-half degrees east, (7.25) seven and twenty-five one-hundredths chains;
128 thence north (3.55) three and fifty-five one-hundredths chains, and thence west (1.63) one and sixty-three one-hundredths chains to the beginning, the north half of lot (1) one, and the south half of lot (2) two, of the northwest quarter, and the north half of lot (2) two, of the southwest quarter of section (19) nineteen, containing in the aggregate (177.92) one hundred and seventy-seven and ninety-two one-hundredths acres.

The southeast quarter of the northeast quarter of section (21) twenty-one, containing (40) forty acres.

The northeast quarter of the southeast quarter, the south half of the northeast quarter and the east half of the northwest quarter of section (22) twenty-two, containing in the aggregate (200) two hundred acres.

Also the following-described tracts or parcels of land in said county of Iron and State of Missouri, and in township (34) thirty-four range (4) four east, to wit:

The southeast and northeast quarters lots (1) one and (2) two of the southwest quarter and all of the northwest quarter except (30) thirty acres heretofore sold by the Pilot Knob Iron Company to David Weiss, by deed recorded in said Iron county, in Book "E," page 303, and except (4.30) four and thirty one-hundredths acres sold by said company to F. Inmer, by deed recorded in said county, in Book "Z," page 374, leaving in said northwest quarter as the quantity hereby conveyed (98.71) ninety-eight and seventy-one one-hundredths acres, all in section (19) nineteen, and containing in the aggregate (563.83) five hundred and sixty-three and eighty-three one-hundredths acres.

The west half and southeast quarter of the southeast quar-
129 ter, the north half and southwest quarter of the northeast quarter, and the west half of section (20) twenty, containing in the aggregate (596.92) five hundred and ninety-six and ninety-two one-hundredths acres.

The south half of the northeast quarter, the south half and northwest quarter of the northwest quarter, and the south half of section (21) twenty-one, containing in the aggregate (520) five hundred and twenty acres.

The north half of the northeast quarter and all of the southeast,

southwest and northwest quarters of section (22) twenty-two, containing (560) five hundred and sixty acres.

The east half and southwest quarter of section (23) twenty-three, containing in the aggregate (489.24) four hundred and eighty-nine and twenty-four one-hundredths acres.

The southeast quarter, the west half and southeast quarter of the northeast quarter, the west half and southwest quarter of the northwest quarter and the south half of the southwest quarter of section (24) twenty-four, containing in the aggregate (498.53) four hundred and ninety-eight and fifty-three one-hundredths acres.

The east half and southwest quarter of the southeast quarter, the east half and northwest quarter of the northeast quarter, the north half and southwest quarter of the northwest quarter and the southwest quarter of section (25) twenty-five, containing in the aggregate (542.72) five hundred and forty-two and seventy-two one-hundredths acres.

All of section (26) twenty-six and (27) twenty-seven, containing together (1,315.36) thirteen hundred and fifteen and thirty-six one-hundredths acres.

130 The east half of the southeast quarter, the west half of the southwest quarter and the west half of section (28) twenty-eight, containing in the aggregate (480) four hundred and eighty acres.

All of section (29) twenty-nine, containing (683.26) six hundred and eighty-three and twenty-six one-hundredths acres.

The southeast quarter, the east half and southwest quarter of the southwest quarter, and all of the northeast and northwest quarters, except so much thereof as has been laid out as the town of Pilot Knob, leaving in said quarters to be hereby conveyed (197.26) one hundred and ninety-seven and twenty-six one-hundredths acres, all in section thirty (30), and containing in the aggregate (475.18) four hundred and seventy-five and eighteen one-hundredths acres.

All of section (31) thirty-one except (11.25) eleven and twenty-five one-hundredths acres heretofore conveyed by the Pilot Knob Iron Company to T. D. Davis, by deed recorded in said Iron county, in Book M, page 305, and except (4.86) four and eighty-six one-hundredths acres, conveyed by said company to T. R. Goulding, by deed recorded in said county, in Book "R," page 113, leaving in said section as the quantity to be hereby conveyed (601.50) six hundred and one and fifty one-hundredths acres.

The west half of the southeast quarter, the north half and all of the east half of the southeast quarter of section (32) thirty-two except two acres sold by the Pilot Knob Iron Company to Edwin May, by deed recorded in said Iron county, in Book "O," page 232,

131 and except one-quarter acre, conveyed by said company to D. T. Ake, by deed recorded in said county, in Book (28) twenty-eight, page 30, and except so much thereof as was laid out as the North and East addition to the city of Ironton, leaving in said section as the quantity to be hereby conveyed (302.19) three hundred and two and nineteen one-hundredths acres.

The northeast quarter of the northeast quarter, and the north half

and southwest quarter of the northwest quarter of section (33) thirty-three, containing in the aggregate (160) one hundred and sixty acres.

All of sections (34) thirty-four and (35) thirty-five, containing together (1,297.37) twelve hundred and ninety-seven and thirty-seven one-hundredths acres.

The north half of the northeast quarter, the east half and northwest quarter of the southwest quarter, and the northwest quarter of section (36) thirty-six, containing in the aggregate (288.95) two hundred and eighty-eight and ninety-five one-hundredths acres.

Also the following lots in the town of Pilot Knob in said county of Iron, as the same are shown on the recorded plat of said town; to wit:

Lots (2) two and (3) three in block (3) three.

Lot (4) four in block (12) twelve.

Lots (10) ten, (11) eleven, (17) seventeen, (18) eighteen, (19) nineteen and (20) twenty, in block (13) thirteen.

Lots (6) six and (7) seven, in block (14) fourteen.

132 Lots (1) one, (2) two, (4) four, and (9) nine, in block (16) sixteen.

Lot (14) fourteen, in block (25) twenty-five.

All of block (26) twenty-six.

Lot (3) three, in block (30) thirty.

Lots (3) three, (4) four and (5) five, in block (32) thirty-two.

Lot (5) five, in block (41) forty-one.

Also the following lots in the North addition to the city of Ironton, in said county of Iron, as shown on the recorded plat of said addition; to wit:

Lots (1) one to (8) eight inclusive, in block (7) seven.

All of blocks (12) twelve, (13) thirteen, (14) fourteen and (15) fifteen.

Also lot (4) four in block (7) seven, of the East addition to the city of Ironton, in said county of Iron, as shown on the recorded plat of said addition.

Also, second, all and singular those certain lots and tenements lying and being situate in the county of Jackson and State of Illinois, formerly belonging to the Grand Tower Mining, Manufacturing and Transportation Company, and being the same lands acquired by said St. Louis Ore and Steel Company by deed of David Dows and wife and Le Grand B. Cannon, dated March 25th, A. D. 1882, recorded in the office of the recorder of deeds of Jackson county, State of Illinois, in Book 19 of Deeds, at page 5, and

133 following: the said lands in Jackson county, Illinois, being more particularly described as follows, to wit:

In township nine, south range, one west, of the third principal meridian.

Part of the northwest quarter of the southeast quarter of section sixteen, commencing at a point of the line between the northwest quarter and the southwest quarter of the southeast quarter of said section, said point being one hundred feet east of the center of the Illinois Central railroad, thence running north 5° 30′ west, and

parallel with the said railroad, 16.50 chains; thence north 84° 30′ east, $6\frac{6}{100}$ chains; thence south 5° 30′ east, 16.50 chains; thence south 84° 30′ west, $6\frac{6}{100}$ chains, to the place of beginning, the northeast quarter of the southwest quarter that part of the northwest quarter of the southeast quarter lying west of the Illinois Central railroad, the northeast quarter of the southeast quarter of the southwest quarter, and the east half of the northwest quarter of the southeast quarter of the southwest quarter of said section sixteen.

In township eight south, range two west of the third principal meridian.

The southwest quarter of section seven, the south half of the northeast quarter, and the southeast quarter of section twenty-six, the north half of the southwest quarter, and the south half of the southwest quarter of section twenty-eight, the northwest quarter of section twenty-nine, the northeast quarter of the northeast quarter of section thirty-one, part of the west half of the northeast quarter of section thirty-two, commencing at the southwest corner of the northeast quarter of said section, thence east $27\frac{1}{2}$ rods, thence north
118 rods, thence west $27\frac{1}{2}$ rods, thence south 118 rods to the
134 place of beginning, and the north half of the northwest quarter of said section thirty-two, the south half of the south half of the northwest quarter, the north half of the southwest quarter, the northeast quarter and the southeast quarter of section thirty-three, the northeast quarter and the south half of section thirty-four, the northeast quarter of the southeast quarter of section thirty-five, the east half of section thirty-six.

In township nine south, range two west of the third principal meridian.

The west half of the northeast quarter of section one, the northeast quarter of the southeast quarter and the south half of the southeast quarter of section two, the north half of the northeast quarter, the northwest quarter, the southwest quarter and one hundred acres off the west side of section three, the northeast quarter of section four, the southeast quarter of section six, the northeast quarter and the northwest quarter of section seven, the northeast quarter, excepting 26.66 acres off the east side of said quarter, the northwest quarter and the southeast quarter of section eight, the northeast quarter, all that part of the northwest quarter lying south of the Big Muddy river, the southwest quarter and the southeast quarter of section nine, the northeast quarter and the northwest quarter, the southwest quarter and the southeast quarter of section ten, the northeast quarter of the southwest quarter, the southeast quarter of the southwest quarter, the northwest quarter of the southeast quarter and the southeast quarter of the southeast quarter of section eleven, the northeast quarter of the northwest quarter, the northwest quarter of the northwest quarter, and the west half of the southwest quarter of section fourteen, the northeast quarter of the northeast quarter, the
west half of the northeast quarter, the northeast quarter of
135 the northwest quarter, the northwest quarter of the northwest quarter, the southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the east half of the south-

west quarter, the east half of the southeast quarter, and the west half of the southeast quarter of section fifteen, the north half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, and the northwest quarter of section sixteen.

In township nine south, range three west of the third principal meridian.

The south half of the northeast quarter, the southeast quarter of the southwest quarter and the southeast quarter of section one, the north half of the northwest quarter of section three, the west half of section five, the southwest quarter of section eight, the west half of the southwest quarter of section thirty-three.

In township ten south, range three west of the third principal meridian.

The northwest quarter of section nineteen, the west half of the southeast quarter of section twenty, the east half of the northwest quarter, the northwest quarter of the northwest quarter, and the southeast quarter of section twenty-nine, the northeast quarter of the northeast quarter, that part of the northwest quarter of section thirty commencing at the half-mile corner on the west side of said section, thence north along the range line 14.68 chains, thence east 27.25 chains, thence south 14.68 chains, thence west 27.25 chains to the place of beginning; the southwest quarter of section thirty, that part of the northwest quarter of section thirty-one commencing at the northwest corner of said section, thence east to the half-mile corner on the north line of said section, thence south 70 deg. 45 min. west to the Mississippi river, thence up said river to the line between ranges three and four, thence north to the place of beginning.

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In township ten south, range four west of the third principal meridian.

Fractional southeast quarter of section eleven, the northwest quarter and the southwest quarter of section thirteen, the fractional northeast quarter of section fourteen, excepting so much thereof as may have been legally reserved by Jacob Kunce and wife in their deed of conveyance, and which is of record in the recorder's office in volume five of Deeds, page 238, in said county; the fractional southeast quarter of section fourteen, the fractional section twenty-three, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof, of and from the party of the first part, the northwest quarter of section twenty-four, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof, of and from the party of the first part, that part of the fractional southwest quarter of section twenty-four, commencing at the southeast corner of the southwest fractional quarter of said section, thence north 40.45 chains to the center of said section, thence west on the line between the northwest quarter and the southwest quarter of said section 27.67 chains to a stake, thence south 30° east to a point on the line between sections twenty-four and twenty-five, distant 4.75 chains from the half-mile corner between said sections, thence east on said

parallel with the said railroad, 16.50 chains; thence north 84° 30′ east, $6\frac{6}{100}$ chains; thence south 5° 30′ east, 16.50 chains; thence south 84° 30′ west, $6\frac{6}{100}$ chains, to the place of beginning, the northeast quarter of the southwest quarter that part of the northwest quarter of the southeast quarter lying west of the Illinois Central railroad, the northeast quarter of the southeast quarter of the southwest quarter, and the east half of the northwest quarter of the southeast quarter of the southwest quarter of said section sixteen.

In township eight south, range two west of the third principal meridian.

The southwest quarter of section seven, the south half of the northeast quarter, and the southeast quarter of section twenty-six, the north half of the southwest quarter, and the south half of the southwest quarter of section twenty-eight, the northwest quarter of section twenty-nine, the northeast quarter of the northeast quarter of section thirty-one, part of the west half of the northeast quarter of section thirty-two, commencing at the southwest corner of the northeast quarter of said section, thence east $27\frac{1}{2}$ rods, thence north
118 rods, thence west $27\frac{1}{2}$ rods, thence south 118 rods to the
134 place of beginning, and the north half of the northwest quarter of said section thirty-two, the south half of the south half of the northwest quarter, the north half of the southwest quarter, the northeast quarter and the southeast quarter of section thirty-three, the northeast quarter and the south half of section thirty-four, the northeast quarter of the southeast quarter of section thirty-five, the east half of section thirty-six.

In township nine south, range two west of the third principal meridian.

The west half of the northeast quarter of section one, the northeast quarter of the southeast quarter and the south half of the southeast quarter of section two, the north half of the northeast quarter, the northwest quarter, the southwest quarter and one hundred acres off the west side of section three, the northeast quarter of section four, the southeast quarter of section six, the northeast quarter and the northwest quarter of section seven, the northeast quarter, excepting 26.66 acres off the east side of said quarter, the northwest quarter and the southeast quarter of section eight, the northeast quarter, all that part of the northwest quarter lying south of the Big Muddy river, the southwest quarter and the southeast quarter of section nine, the northeast quarter and the northwest quarter, the southwest quarter and the southeast quarter of section ten, the northeast quarter of the southwest quarter, the southeast quarter of the southwest quarter, the northwest quarter of the southeast quarter and the southeast quarter of the southeast quarter of section eleven, the northeast quarter of the northwest quarter, the northwest quarter of the northwest quarter, and the west half of the southwest quarter of section fourteen, the northeast quarter of the northeast quarter, the
west half of the northeast quarter, the northeast quarter of
135 the northwest quarter, the northwest quarter of the northwest quarter, the southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the east half of the south-

west quarter, the east half of the southeast quarter, and the west half of the southeast quarter of section fifteen, the north half of the northeast quarter, the southwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, and the northwest quarter of section sixteen.

In township nine south, range three west of the third principal meridian.

The south half of the northeast quarter, the southeast quarter of the southwest quarter and the southeast quarter of section one, the north half of the northwest quarter of section three, the west half of section five, the southwest quarter of section eight, the west half of the southwest quarter of section thirty-three.

In township ten south, range three west of the third principal meridian.

The northwest quarter of section nineteen, the west half of the southeast quarter of section twenty, the east half of the northwest quarter, the northwest quarter of the northwest quarter, and the southeast quarter of section twenty-nine, the northeast quarter of the northeast quarter, that part of the northwest quarter of section thirty commencing at the half-mile corner on the west side of said section, thence north along the range line 14.68 chains, thence east 27.25 chains, thence south 14.68 chains, thence west 27.25 chains to the place of beginning; the southwest quarter of section thirty, that part of the northwest quarter of section thirty-one commencing at the northwest corner of said section, thence east to the half-mile corner on the north line of said section, thence south 70 deg. 45 min. west to the Mississippi river, thence up said river to the line between ranges three and four, thence north to the place of beginning.

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In township ten south, range four west of the third principal meridian.

Fractional southeast quarter of section eleven, the northwest quarter and the southwest quarter of section thirteen, the fractional northeast quarter of section fourteen, excepting so much thereof as may have been legally reserved by Jacob Kunce and wife in their deed of conveyance, and which is of record in the recorder's office in volume five of Deeds, page 238, in said county; the fractional southeast quarter of section fourteen, the fractional section twenty-three, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof, of and from the party of the first part, the northwest quarter of section twenty-four, excepting and reserving from the effect of this conveyance all lots heretofore sold or conveyed to purchasers thereof, of and from the party of the first part, that part of the fractional southwest quarter of section twenty-four, commencing at the southeast corner of the southwest fractional quarter of said section, thence north 40.45 chains to the center of said section, thence west on the line between the northwest quarter and the southwest quarter of said section 27.67 chains to a stake, thence south 30° east to a point on the line between sections twenty-four and twenty-five, distant 4.75 chains from the half-mile corner between said sections, thence east on said

4.75 chains to the place of beginning, excepting the grave-yard tract, bounded as follows: Commencing at a stake on the eastern
137 boundary line of the southwest of section twenty-four, distant 620 feet from the center of said section, thence south 83° 46 min., west 440 feet, thence south 6° 14 min., east 594 feet, thence north 83° 46 min., east 440 feet to a point on said boundary line, thence northward along said line 594 feet to the place of beginning; that part of the southwest quarter of said section commencing at the northwest corner of said quarter section, thence east on the north line of said quarter section 17.23 chains, thence south 30° east 21.75 chains to a stake, thence west on a line parallel to said north line to the section line between sections twenty-three and twenty-four, thence north on said line to the place of beginning, that part of the fractional southwest quarter of section twenty-four, commencing at the southwest corner of said quarter section, thence north 29° west, along the bank of the Mississippi river 13.77 chains; thence north 45° west, along the bank of said river 7.45 chains, to the southeast corner of fractional section twenty-three; thence north on the line between fractional sections twenty-three and twenty-four, 1.74 chains; thence east on a line parallel to the north line of said fractional southwest quarter section, 26.50 chains to a stake; thence south 30° east, 22.50 chains, to a stake on the line between sections twenty-four and twenty-five, distant 4.75 chains from the half-mile corner between said sections; thence west on said line 25.35 chains to the place of beginning, that part of fractional section twenty-five commencing at a stake on the line between sections twenty-four and twenty-five, and distant 4.75 chains, west of the half-mile corner between said sections; thence south 40 deg. east, 15 chains to a stake at the foot of Walker's hill; thence north 54 deg. east, 10 chains; thence north 40 deg. west, 9.26 chains, to a point on the section line between sections twenty-four and twenty-five; thence west on said line
138 11.55 chains to the place of beginning, that part of fractional section twenty-five commencing at a stake on the line between sections twenty-four and twenty-five, and distant 4.75 chains, west of the half-mile corner between said sections; thence south 40 deg. east, 5 chains; thence south 54 deg. west, 18.75 chains to the Mississippi river; thence northward along the bank of said river to the northwest corner of fractional section twenty-five; thence along the line between said sections, 25.35 chains, to the place of beginning, that part of fractional section twenty-five lying on the river side in front of the surveyed plat of lots and streets of Marshall A. Evans' addition to the town of Grand Tower, which plat is of record in the recorder's office in Book "Y" of Deeds, page 266, in said county, that part of fractional section twenty-five commencing at a point on the bank of the Mississippi river distant 22.40 chains northward from a point where the south line of said section strikes the said river, thence north 55 deg. 30 min., east 31.35 chains to the east line of said section, thence on said line north 5 deg. 30 min., west 6.17 chains, thence north 6 deg. 30 min., west 9.81 chains, thence south 59 deg. 5 min., west 35.91 chains to a stone, thence south 31 deg. 5 min., east 2 chains, thence south 59 deg. 5 min., west 5 chains, thence

north 31 deg. 5 min., west 2 chains, thence south 59 deg. 5 min., west $\frac{82}{100}$ chains to the said river, thence down said river to the place of beginning, excepting the tract previously granted to Frederick Schickle *et al.* by said party of the first part, bounded as follows: Commencing at a point on the Mississippi river distant 2 chains southward from the northwest corner of a tract of land heretofore conveyed by a deed from Wash. L. Harris and wife to the Mount Carbon Coal and Railroad Company, which deed is of record in the recorder's office in Book 2, page 566, in said county, thence north 59 deg., east 5.59 chains to a stone, thence north 31 deg., west
139 2 chains to a stone, thence north 59 deg., east 18.13 chains to a stone, thence south 31 deg., east 9.51 chains to a stone, thence south 59 deg., west 22.72 chains to the Mississippi river, thence along the bank of said river to the place of beginning, that part of fractional section twenty-five commencing at the southeast corner of said section, thence along section line west to the Mississippi river, thence along the bank of said river north 34 deg. 40 min., west 22.40 chains, thence north 55 deg. 30 min., east 31.25 chains to the range line, thence southward 34.68 chains to the place of beginning, the fractional section thirty-six.

Together with all and singular the coal and other minerals, mines, blast furnaces, buildings, constructions, fixtures, improvements and appurtenances, rights and privileges thereunto appertaining, which were acquired by said David Dows and Le Grand B. Cannon, by deed from Wisner and Grant, trustees, dated February 23d, 1882, duly recorded in said Jackson county, Illinois; provided, nevertheless, that this conveyance is subject to the like exceptions and reservations as to the property hereby intended to be conveyed as are contained and set forth in said deed from David Dows and wife and Le Grand B. Cannon to said St. Louis Ore and Steel Company, to which reference is hereby made; and provided, also, and it is hereby expressly understood, that this mortgage is made subject to the prior mortgage heretofore made by St. Louis Ore and Steel Company to the Farmers' Loan and Trust Company of New York, as trustee, to secure certain bonds heretofore issued by said party of the first part herein, and to which original mortgage, and the record thereof, in Book —, page — in the office of the recorder of deeds of said Jackson county, Illinois, reference is made.

To have and to hold all and singular the above-described lots, tracts and parcels of land, together with all buildings, fix-
140 tures, furnaces, and other permanent erections and improvements thereon, or which may be thereon erected or placed by said grantor pending the trust hereby created, and also all rights, privileges and appurtenances thereunto in anywise belonging (but subject always to the first-mortgage lien hereinafter mentioned), unto them, the said parties of the second part, as joint tenants, and not as tenants in common, and to their successors in trust respectively, if any, to the use of them, the said parties of the second part, and of the survivor of them and of their and his successors in trust, if any, their and his heirs and assigns for-ver.

But, upon trust, nevertheless, for the benefit and better security

of such persons respectively who shall, or may from time to time be, or become holders for value, and registered owners of the said bonds of said Grand Tower and Carbondale Railroad Company hereinbefore mentioned, or any of them, and with the powers and duties on the part of said trustees, and each of them on this behalf below stated, and subject to the conditions and covenants respectively hereinafter set forth, that is to say:

1. It is hereby declared that the said lands hereinbefore described are by these presents conveyed, subject to a certain first mortgage thereon, heretofore executed by said St. Louis Ore and Steel Company, under date of May 3d, 1882, to the Farmers' Loan and Trust Company of New York, as trustees, which mortgage was given to secure certain bonds of said steel company amounting in all to one million dollars, to be due respectively on May 1st, 1902, with semi-annual interest at seven per cent. per annum to accrue thereon until that date; which original first mortgage or deed of trust has been delivered to and is held by said Farmers' Loan and Trust
141 Company, and to which instrument, and to the record thereof in the offices respectively of the recorders of deeds for said counties of Jefferson, Madison, St. Francois and Iron, in the State of Missouri, and said county of Jackson, in the State of Illinois, express reference is hereby made for all things therein contained.

It is further declared and mutually agreed between said parties hereto as follows, to wit:

2. The said steel company covenants with said trustees, parties of the second part, for the benefit aforesaid, that the principal of and semi-annual interest to accrue upon each and every of said seven hundred bonds so issued by said Grand Tower and Carbondale Railroad Company, which shall have been negotiated or delivered for value to any third person, by or for the benefit of said steel company, shall, by said Grand Tower and Carbondale Railroad Company, be paid when due respectively according to the tenor of said bonds and coupons unto the legal holder and *and* registered owner of the same.

And said steel company further covenants with said trustees, for the benefit aforesaid, that in case of default made by said railroad company in such payment, when due, of any of said seven hundred bonds theretofore negotiated or delivered for value to any third person by or for the benefit of said steel company, or on default in such payment by said railroad company of any interest coupon accrued due upon any such bond so negotiated or delivered for value as aforesaid, the said steel company will, upon presentation of such bond or coupon, at the chief office of said steel company in the city of St. Louis, pay, or cause to be paid, the full amount due thereon, unto the legal holder or registered owner of said bond, or the legal holder of such coupon.

142 3. It is further mutually agreed between the parties hereto that upon the payment or the surrender for cancellation either to said Grand Tower and Carbondale Railroad Company, or assigns, or to said steel company, of all of the said seven hundred bonds which may or shall have been negotiated or delivered for

value by or for the benefit of said steel company, the trusts and powers hereby created shall cease, and said trustees, parties of the second part, or the survivor of them, or their or his successors in trust, if any, shall, upon demand by said steel company, execute a proper deed or deeds of release from the lien of this conveyance of the property hereinbefore described: Provided, that if at the maturity of said bonds, all of said bonds should not be presented for payment or cancellation, then upon the deposit by or for account of said steel company, or assigns, with said trustees, or the survivor of them, or their or his successors in trust, if any, of an amount of money sufficient to pay and discharge all of said bonds theretofore negotiated for the benefit of said steel company, and still outstanding, together with interest accrued and unpaid thereon up to the date of such deposit, then, and in such case, said trustees, or the survivor of them, or their or his successors, shall, upon demand of said steel company, or assigns, release all and singular the land and property heretofore conveyed from the lien of this mortgage deed by a proper conveyance to that end.

4. And this indenture further witnesseth that pending this trust and until default in the fulfillment by the said steel company of its covenants aforesaid, the absolute right is reserved to said steel company, its officers, agents, lessees and assigns respectively to hold, occupy and possess the said above described and granted lands and premises and every part thereof, and to use and operate for its own benefit the buildings, improvements, plants and machinery
143 thereon, or which may be placed thereon, and to dig, mine, take away and dispose of any ores, minerals, coal, timber and other products of or property or values arising from or appertaining to said premises for the benefit and profit of said steel company without accountability therefor in any respect, and further,

5. That pending the trust hereby created it shall be lawful for the said steel company, the said parties of the second part approving and joining in such sale, to sell at public or private sale, upon any terms by them agreed on, any part of the property hereinbefore described, and to convey the same discharged of any trust or lien under this conveyance to the purchaser or purchasers thereof, provided that it shall be sufficient for either one of such trustees to join in such conveyance if the signature of the other cannot be obtained by reason of his absence or inability to act, and the recital in any such deed of said facts, shall be *prima facie* evidence thereof, and provided further that the proceeds of all such sales, so long as said first mortgage above mentioned shall remain in force, shall be paid to the said Farmers' Loan and Trust Company, trustee under said first mortgage, or its successor in such trust, to be applied as in said first mortgage provided, but if and whenever said first mortgage shall have been satisfied or released, then the proceeds of all such sales shall be paid to said trustees, or acting trustee hereunder, and as often as such proceeds in their or his hands shall amount to ($1,000) one thousand dollars or upwards the same shall be applied by them to the purchase of outstanding bonds, secured by this mortgage, at a price not to exceed (10 per cent.) ten per cent. in excess of their

par value, or if, and so long as such purchase of said bonds cannot be made, all sums so received by said trustees or acting trustee shall be by them or him safely invested or used to the best advan-
144 tage as a sinking fund for the purchase of said bonds hereby secured, and for the payment of the principal thereof at maturity.

6. It is further mutually covenanted and declared, that in case default be made by said Grand Tower and Carbondale Railroad Company in payment when due according to the tenor thereof of the principal sum of any of said railroad bonds above mentioned outstanding for value, or any part ther-of, or of any interest due on any such bond, or part thereof, and default be also made by said steel company, upon demand made as aforesaid, in the payment of such sum overdue and unpaid, whether principal or interest as aforesaid, then it shall be lawful for said trustees, or the survivor of them, or their or his successor in this trust, if any, in person, or by their or his attorneys or agents, to enter upon and take possession of any part or all and every of said lands and tenements, improvements and appurtenances hereinbefore conveyed, and therefore to exclude said party of the first part, its officers and agents, and the same to occupy and possess and for the purposes of this trust until sale thereof can be made as hereinafter provided, to use and operate the buildings, improvements, plant and machinery thereon, and to dig, mine and take away and dispose of any ore, minerals, coal, timber, and other products thereof, for the benefit of the holders of said bonds hereby secured, and all proceeds, incomes and profits thereof to receive and apply to the reasonable and necessary expenses of maintaining, using and operating the same as aforesaid, including just compensation to said trustees, or acting trustee, their or his attorneys, agents and servants; all surplus of such receipts and profits over such expenses to be by said trustees, or acting trustees, added to and applied in like manner with the proceeds of sale hereinafter mentioned.

7. And in case of default such as aforesaid on the part of
145 said steel company, it shall further be lawful for and the duty of said trustees; or surviving trustee, their and his successors in this trust, upon the request therefor in writing of the registered holders of the majority in amount of said bonds then outstanding for value to expose to sale and sell at public auction to the highest bidder for cash, the said lands, tenements, property and appurtenances hereinbefore described and conveyed, or so much thereof as may be necessary to pay the principal of all said bonds so outstanding for value, whether then due or not, by their terms, together with all interest accrued and unpaid thereon up to the day of such sale.

8. In case any of said above-described lands in Jackson county, Illinois, shall be sold under the provisions hereof, such sale shall be had at the front door of the principal office of said steel company at Grand Tower, in said Jackson county, Illinois, in one or more parcels, as may be determined by said trustees or acting trustee, to be for the benefit of the concerned. In case of sale hereunder of

any of said lands situate in the State of Missouri, such sale shall be had at the east front door of the court-house in the city of St. Louis, Missouri, the lands in said county of Jefferson, Madison, St. Francois and Iron, respectively, to be sold in one or more parcels, as said trustees or acting trustee may judge for the interest of the concerned; provided that in making any such sale said trustees or acting trustee shall so far as practicable comply with the request in writing, if any made by the majority in interest of the holders of such bonds, in determining what part of said property shall be first sold and in what parcels, and if upon sale of part of said property the proceeds shall not suffice to pay the principal and interest of all bonds out standing together with the expenses of the trust, a further sale or sales shall be had by adjournment as hereinafter provided, if necessary, until enough or all of said mortgaged property shall have been sold hereunder for that purpose.

146 9. Said trustees or acting trustee shall give not less than thirty days' public notice of any sale made hereunder of any of the lands above mentioned by advertisement, setting forth the time, terms and place of sale and the property to be sold, such advertisement to be published at least once a week for at least four weeks preceding such sale, in at least one daily newspaper printed in the English language and published in the city of St. Louis, Missouri, and one daily newspaper printed in the English language and published in the city of New York and State of New York, provided that in case said lands in Jackson county, Illinois, or any part thereof be sold hereunder a like notice of such sale shall also be published at least once a week for at least four weeks prior to date of sale in some newspaper published in said Jackson county, Illinois, or if no newspaper be then published in said county then in some newspaper of general circulation in some adjoining county, to be selected by said trustees.

10. And it shall be further lawful for said trustees or acting trustee, their or his successors in trust, in case of any sale of any part of said lands above mentioned being advertised hereunder, to adjourn such sale or sales in respect of all the lands so advertised, or any part thereof, from time to time, in accordance with the written request of the holders of a majority in amount of all said bonds then outstanding for value and unpaid; provided further, that it shall be lawful for said trustees or acting trustee, on their or his own motion, if they or he shall judge that the interest of the holders of said bonds shall so require, upon that day and at the place of any sale so advertised, to adjourn such sale to some other day not less than two nor more than six weeks thereafter; provided further, that in case of any adjournment of any such sale made under the

147 foregoing provisions notice of such adjournment shall be given by the continuation of the advertisement of sale already published or in course of publication, with a further statement as part of said advertisement, that such sale has been so adjourned and the time and place thereof.

11. Upon any sale made hereunder, said trustees, or acting trustee, their or his successors, shall receive from the purchaser of any

and all of said property sold hereunder the proceeds of such sale in cash, (except as hereinafter provided for acceptance of bonds hereby secured in part payment therefor), and upon consummation of such sale, in accordance with the terms and conditions thereof, shall execute, acknowledge and deliver to the purchaser or *purchaser or* purchasers thereof a good and sufficient deed or deeds for the property so sold, discharged of any trust or lien hereunder; and the sale and conveyance in accordance with the terms hereof of any property hereinbefore mentioned and conveyed shall be a perpetual bar, as well at law as in equity, against said party of the first part, and all other persons lawfully claiming or to claim the same or any part thereof, or interest therein by, through or under said steel company.

12. The proceeds received from any and all sales made hereunder shall by said trustees, or acting trustee, be forthwith applied:

First. To the payment of the reasonable and necessary cost of executing this trust, including reasonable compensation to and counsel fees and other necessary disbursements of said trustees or acting trustee.

Secondly. To the payment in full of all interest theretofore accrued, due, and remaining unpaid upon any of said bonds outstanding for value as aforesaid.

148 Thirdly. To the payment in full of all interest accrued upon any of said outstanding bonds since the date when interest last previously accrued, due thereon up to the date of such sale, and the remainder of such proceeds shall be applied *pro rata* to the payment of the principal of all said bonds theretofore negotiated and then outstanding, for value unto the legal owners and registered holders thereof, respectively.

Provided, that in case of any sale made under the provisions of this mortgage deed of trust, the purchaser or purchasers thereat shall be entitled in making settlement for and payment of the purchase-money due from them, to deliver to the trustees or trustee, or other person making said sale, towards the payment of such purchase-money any of said bonds heretofore mentioned outstanding, for value and interest coupons thereto attached and unpaid, whereof such purchaser or purchasers are or shall be the legal holder or owner, counting such bonds and interest coupons for that purpose at a sum not exceeding that which shall be payable *pro rata* out of the net proceeds of such sale, to the holder or holders of such bonds and coupons, as his or their share, in proportion of such net proceeds of sale, after allowing for the proportion of payment which may be required in cash, for the cost and expenses of such sale, which proportion of cash payment shall be determined and announced by said trustees or trustee, or other person making such sale, previous to or at the time of exposing said property for sale; and if the amount which may be paid under the foregoing provisions, in bonds and coupons as aforesaid, shall be less than the amount due on said bonds or coupons, respectively, then such payment in bonds or coupons to the extent above authorized may be made by endors-

ing as a credit on said bonds or coupons, respectively, the amount so payable as aforesaid.

149 13. It is further mutually agreed, that all provisions herein contained touching the powers and duties of said trustees hereunder, and the conditions and terms of sale and notice and adjournment thereof, shall apply equally to any sale which may be made in execution of this trust pursuant to the decree of any court of competent jurisdiction, and to the duties of any receiver who may by any such court be appointed for the purpose of taking possession of the said lands above described, or any part thereof, in case of default by said steel company as aforesaid.

14. And it is further provided and mutually agreed, that in case either of said parties of the second part, trustees above named, when requested by a majority of the legal holders of said bonds above mentioned outstanding for value to proceed to execute this trust hereinbefore declared shall fail or refuse to execute the same, or shall be prevented from so doing by absence, sickness or other inability to act, it shall be lawful for the remaining trustee, or his successor in said trust, appointed by any court of competent jurisdiction, to proceed to execute said trust, and in that behalf to exercise all powers and fulfill all duties hereunder arising, with like effect as if such acting trustee were sole trustee hereunder; and any conveyance in such case made hereunder by any sole acting trustee, in compliance with the conditions and provisions hereof, shall be as effectual as if made by both said parties of the second part; provided, further, that all recitals in any conveyance made in virtue of the powers and trusts herein declared of any fact proper to be recited in any such conveyance shall be evidence of such facts in all courts and places as between the parties hereto and all persons claiming or to claim under them respectively.

15. And the said parties of the second part, each for him-
150 self, hereby accepts the trusts created by this indenture, but upon the express understanding and condition, nevertheless, that they, the said parties of the second part, and each of them, will be responsible only for the exercise of good faith and reasonable diligence on his own part in the execution of said trust.

In testimony whereof, the said St. Louis Ore and Steel Company, by its president hath executed these presents under the common seal of said corporation, attested by its secretary, pursuant to the resolutions and direction of the shareholders and directors of said company as hereinbefore set forth, and the said parties of the second part as trustees as aforesaid, have also hereunto set their hands and seals respectively.

Dated at the city of St. Louis, Missouri, the day and *and* year first hereinabove written.

[SEAL.] ST. LOUIS ORE AND STEEL COMPANY,
By E. A. HITCHCOCK, *President.*
Attest: O. L. GARRISON, *Secretary.*
R. M. OLYPHANT. [SEAL.]
HENRY HITCHCOCK. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this twenty-eighth day of May, A. D. 1884, before me, the undersigned, a notary public, within and for the city of St. Louis and State of Missouri, duly commissioned, qualified, and acting for a term of office which will expire on the twenty-eighth day of June, A. D. 1885, appeared Ethan A. Hitchcock, to me personally
151 known to be the same person whose name is subscribed to the foregoing instrument as having executed the same on behalf of the St. Louis Ore and Steel Company, grantor therein, as the president of said corporation, and the said E. A. Hitchcock, being first by me duly sworn, did say that he is the president of the said St. Louis Ore and Steel Company, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said Ethan A. Hitchcock further acknowledged the said instrument to be the free and voluntary act and deed of said corporation, that he had signed, and sealed and delivered the same as such for the uses and purposes therein set forth.

Given under my hand and official seal as such notary
[SEAL.] public at the said city of St. Louis and State of Missouri the day and year in this certificate first above written.

EDWARD S. ROBERT,
Notary Public for the City of St. Louis, Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this twenty-eighth day of May, A. D., 1884, before the undersigned, notary public for said city and State, personally appeared Henry Hitchcock to me known to be one of the persons described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed my official seal as such notary public at said city of St. Louis the day and year last aforesaid.

EDWARD S. ROBERT,
Notary Public.

152 STATE OF NEW YORK, } ss:
County of New York, City of New York, }

On this thirty-first day of May, A. D., 1884, before me, the undersigned, a notary public within and for the county of Kings, personally came and appeared Robert M. Olyphant, to me personally known, and to me known to be one of the individuals described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and
[SEAL.] official seal as such notary public at the city, county and State aforesaid, the day and year above written.

JOHN A. PATTISON,
Notary Public, Kings County.

Certificate filed in county of New York.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that John A. Pattison has filed in the clerk's office of the county of New York, a certified copy of his appointment as notary public for the county of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same, and further, that I am well acquainted with the handwriting of such notary and verily believe the signature to the said certificate of proof or acknowl-
153 edgment to be genuine. I further certify, that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county the 31st day of May, 1884.

[SEAL.] PATRICK KEENAN, *Clerk.*

STATE OF MISSOURI, }
County of Iron, } *ss:*

(In the Office of the Clerk of the Circuit Court and Recorder of Deeds.)

I, Jos. Huff, clerk of the circuit court and *ex officio* recorder of deeds, within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the — thereon, was filed for record in said office, on the 6th day of June, 1884, at 4 o'clock, 20 minutes p. m., and that the same is duly recorded in said office, in Book No. 30, at page 329 and following.

In witness whereof, I have hereto set my hand and affixed the seal of said court.

Done at office at Ironton, Missouri, this 6th day of June, 1884.

[SEAL.] JOS. HUFF,
Clerk of the Circuit Court and ex Officio Recorder.

154 STATE OF MISSOURI, }
County of St. Francois, } *ss:*

(In the Recorder's Office.)

I, John C. Alexander, clerk of the circuit court, and *ex officio* recorder, within and for the county aforesaid, do certify that the in-

struments of writing hereto attached, with the certificate thereon, was filed for record in my office, on the 14th day of June, 1884, at 8 o'clock 20 min. a. m., and that the same is duly recorded in said office, in Book No. 28 for recording deeds, &c., at page 104 and following.

In witness whereof, I have hereunto set my hand and affixed the seal of said court.

Done at Farmington, Missouri, this 14th day of June, 1884.

[SEAL.] JOHN C. ALEXANDER,
Clerk and Recorder,
By THOS. H. STAM,
Dept. Clerk and R.

Endorsed on the back of the foregoing exhibit, is the following, to wit:

EXHIBIT "D."

STATE OF ILLINOIS, } *ss:*
Jackson County, }

I, C. B. Dishon, clerk of the circuit court and *ex officio* recorder within and for said county, in the State aforesaid, do hereby certify that this instrument was filed for record in my office the 26th day of June, A. D. 1884 at the hour of 11 o'clock a. m., and duly recorded in Book "D," of Miscel., page 17.

Fee, —.

C. B. DISHON, *Clerk.*

154½ *Order Appointing Provisional Receiver, July* 21, 1884.

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY, THE GRAND Tower and Carbondale Railroad Company, The Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants. } In Equity.

Now, on this 21st day of July, 1884, comes the said complainant, by his solicitor, and, having filed his bill of complaint and exhibits herein, prays the court to appoint a receiver with powers to take possession of, manage, operate, control, and preserve all the property of every description of The St. Louis Ore and Steel Company and The Grand Tower and Carbondale Railroad Company, defendants herein, whether such property be real, personal, or mixed, and all rights, credits, and choses in action of said defendant corporations, whether such property, rights, credits, and choses in action be situated within the eastern district of Missouri or elsewhere.

155 And the complainant having, by his said bill of complaint and exhibits forming a part thereof, shown to the court that there is great danger of loss, waste, and destruction of the property of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company or of valuable parts thereof unless such receiver be appointed, it is—

Ordered, adjudged, and decreed that Ethan Allan Hitchcock be, and he is hereby, appointed provisional receiver of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company, with power and instructions to take possession of the same, and to manage, control, and operate said railroad and the ore and coal mines of said St. Louis Ore and Steel Company, and to carry out and perform the contracts of said last-named company for the purchase and sale of steel rails, and to preserve and protect all the property of said corporations defendant, and collect, as far as possible, all accounts, choses in action, and credits due to said companies, acting in all things under the order of this court.

That the provisional receiver, before entering upon his duties, give his bond for the benefit of all whom it may concern in the penal sum of one hundred thousand dollars, conditioned for the faithful performance by said receiver of his duties as such, and that he will in all things observe and perform the orders of this court now or hereafter to be made.

That said receiver present his bond to the clerk of this court for approval, and that upon said presentation and approval of said bond said receiver is entitled and required to proceed at once with the performance of his duties.

156 It is further ordered that all parties herein, upon being informed of this order and of the approval of said bond as aforesaid, proceed to surrender said railroad and all the property, choses in action, books, and papers and accounts of said companies to said receiver.

It is further ordered that the said receiver, out of the income that shall come into his hands from the operations of said railroad and said ore and coal mines and from the performance of said contracts for the purchase and sale of steel rails or otherwise, proceed to pay all just claims and accounts for labor, supplies, professional services, salaries of officers and employees, whether of said railroad company or of said steel and ore company, that have been earned or have matured within six months before the making of this order.

It is further ordered that said receiver pay all taxes and current expenses in the operation of said railroad and said mines and the performance of said contracts and collect all the revenue thereof and all choses in action, accounts, and credits due and to become due said companies.

That said receiver report to this court from time to time his doings under this decree, and that he apply for instructions to this court when necessary.

That said provisional receiver cause notice to be published in the St. Louis Republican for at least one week that on the seventh day of August next all parties in interest may be heard on the question

of the appointment of a permanent receiver herein at the
157 chambers of Justice D. J. Brewer, Leavenworth, Kansas.

DAVID J. BREWER,
Circuit Judge.

158 *Petition of Receiver to Negotiate Bill of Exchange. Filed July 30, 1884.*

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY, THE GRAND TOWER and Carbondale Railroad Company, The Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants.

Now comes the provisional receiver heretofore appointed in the above-entitled cause and respectfully shows to the court that he is in need of funds to pay laborers at the ore mines of the St. Louis Ore and Steel Company at Pilot Knob, Missouri; that the wages due for labor at said mines should be paid without delay; that any postponement of such payment will involve danger of loss and embarrassment to the future operations of said company which have been placed under the control and management of your receiver; and your petitioner further shows to the court that, in addition to other available assets in his hands, it becomes necessary for the payment of said past-due wages to negotiate an acceptance of $5,781.74, given by the Western Nail Company of Belleville, Illinois, in favor of the St. Louis Ore and Steel Company, for material heretofore sold and delivered by said St. Louis Ore and Steel Company to said Western Nail Company, which acceptance becomes due in thirty days from July 21st, 1884; that he has endeavored to discount said acceptance for the purpose of raising the needed funds aforesaid,
159 but that the bank declines to discount said acceptance with this receiver's endorsement without an order of this court authorizing the same.

In view of the premises your petitioner now prays for an order authorizing this receiver to negotiate and discount said acceptance at any bank in the city of St. Louis, and to raise the required funds for the purpose aforesaid.

HITCHCOCK, MADILL & FINKELNBURG,
Attorneys for E. A. Hitchcock, Provisional Receiver.

STATE OF MISSOURI, } ss:
City of St. Louis, }

Ethan A. Hitchcock, the above-named petitioner, being duly sworn, says that he believes the foregoing petition and the matters therein as stated are true.

E. A. HITCHCOCK.

Sworn to and subscribed before me this 29th day of July, 1884.

My commission expires 28th June, 1885.

[SEAL.] GEORGE H. STILLE,
Notary Public in and for said City of St. Louis.

I acknowledge notice of foregoing petition and, in behalf of complainant, Robert M. Olyphant, consent that the order requested should be made.

EDMUND T. ALLEN,
Solicitor for Complainant.

160 *Order to Negotiate Bill of Exchange, July* 30, 1884.

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY, THE GRAND TOWER and Carbondale Railroad Company, The Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants.

Now, on this 30th day of July, 1884, comes E. A. Hitchcock, provisional receiver in above cause, and having filed his petition for a supplemental order authorizing him to negotiate, sell, or discount a certain bill of exchange for $5,781.74 drawn on and accepted by the Western Nail Company of Belleville, Illinois, maturing in thirty days from July 21st, 1884, and now held by said receiver as part of the assets of said St. Louis Ore and Steel Company, and the said receiver having shown to the court that the negotiations of said acceptance is necessary to obtain funds to pay laborers, and that loss may ensue by delay in such payment, it is ordered, adjudged, and decreed that Ethan A. Hitchcock, provisional receiver as aforesaid, be, and he is hereby, authorized and empowered to sell, negotiate, or discount the accepted draft or bill of exchange hereinabove
161 described at any bank in the city of St. Louis, and for that purpose to transfer the same by endorsement as receiver, and to receive the proceeds for the purposes aforesaid.

DAVID J. BREWER,
Circuit Judge.

162 *Order Appointing Permanent Receiver, August* 7, 1884.

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY, THE Grand Tower and Carbondale Railroad Company, The Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants.

Number 2394. In Equity.

In chambers, before the Hon. David J. Brewer, judge of said circuit court.

This cause coming on to be heard on this seventh day of August, A. D. 1884, at chambers, before the undersigned judge of said circuit court, in Leavenworth, Kansas, on the question of the appointment of a permanent receiver of the St. Louis Ore and Steel Company, pursuant to the order made in this cause on the 21st day of July, A. D. 1884, and upon notice by publication ordered to be given to all parties interested, the said complainant appeared by his counsel, Edmund T. Allen, Esq.

And thereupon also appeared — John W. Noble, Esq., their counsel, the following persons, namely, Charles P. Chouteau and others named in schedule of bondholders, Exhibit "A," attached to petition of Charles P. Chouteau and others hereinafter mentioned, claiming respectively as owners and holders of five hundred and ten first-mortgage bonds of the Vulcan iron works, dated May 24th, 1875, mentioned in the bill of complaint, being for the ag-
163 gregate sum of five hundred and ten thousand dollars; also the following persons, namely, Charles P. Chouteau and others, claiming respectively as holders and owners of divers shares of the capital stock of the St. Louis Ore and Steel Company, aggregating in all the number of two thousand seven hundred and eighty-six shares of said stock, and also the following-named persons, namely, the Iron Mountain Company and others named in Exhibit "B," attached to said intervening petition, claiming respectively to be creditors of said St. Louis Ore and Steel Company in divers sums aggregating the total amount of seventy-five thousand and five hundred and two and $\frac{20}{100}$ dollars, and also appeared David P. Dyer, Esq., as counsel for the following persons, namely, Oliver A. Hart and others, claiming respectively to be holders and owners in all of one hundred and eleven of said first-mortgage bonds of the Vulcan iron works for the aggregate sum of one hundred and eleven thousand dollars; also for the following persons, namely, David Dows, Le G. B. Cannon, Geo. Henry Warren, Solon Humphreys, and others, claiming respectively to be holders and owners for value of eight hundred and nineteen bonds of the St. Louis Ore and Steel Company, dated May 3rd, 1882, for one thousand dollars

each, such as mentioned in said bill of complaint, being for the aggregate sum of eight hundred and nineteen thousand dollars; also for the following persons, namely, David Dows, Le Grand B. Cannon, and others, claiming respectively to be holder for value of certain notes executed by the Grand Tower and Carbondale Railroad Company mentioned in the bill of complaint, secured by pledge of the bonds of said Grand Tower and Carbondale Railroad Company, guaranteed by the said St. Louis Ore and Steel Company, as in said bill of complaint set forth, to the amount in all of four hundred and eighty-seven thousand dollars; also for the following persons, namely, E. D. Morgan & Co., H. G. Marquand,
164 Cyrus W. Field, Thomas E. Tutt, and divers others persons, claiming respectively to be holders and owners of divers shares of the capital stock of said St. Louis Ore and Steel Company to the number in all of eighteen thousand six hundred and six shares of said capital stock; and also for the following persons, namely: Boatsmen's savings bank, Crow, Hargadine & Co.; Greeley Burnham Grocery Company, and others, claiming respectively to be creditors of said St. Louis Ore and Steel Company for divers amounts, aggregating in all the sum of fifty-three thousand three hundred and ninety-five dollars; and also appeared, in his proper person and by the said David P. Dyer, Esq., as his counsel, the said Ethan A. Hitchcock, heretofore appointed provisional receiver in this behalf; and also appeared Henry Hitchcock, a defendant in this cause, in his own proper person; and also appeared the Missouri Pacific railroad and Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific railroad, by Thomas J. Portis, Esq., their counsel, claiming to be creditors of the said St. Louis Ore and Steel Company.

And the said Charles P. Chouteau, for himself and others, the bondholders of the Vulcan iron works and also the unsecured creditors named as aforesaid, having by leave filed his petition opposing the appointment of E. A. Hitchcock to be permanent receiver, said petition is ordered to be endorsed, filed of even date with this order, as well as the affidavits in support thereof.

And thereupon, it appearing to the court, by due proof thereof now here shown in compliance with the said order made on July
165 21st, A. D. 1884, the said provisional receiver had caused notice to be published in the Missouri Republican, a newspaper published at the city of St. Louis, Missouri, on the 23rd day of July, A. D. 1884, and on each succeeding day up to and including the 6th day of August, instant, a notice to all parties interested in the hearing appointed for this day in this behalf such as required by said order of July 21st, A. D. 1884;

And it further appearing to the court that on the 21st day of July, A. D. 1884, the said Ethan A. Hitchcock, as receiver in this behalf, executed and presented to the clerk of this court for approval his bond, with two sureties, in the penal sum of one hundred thousand dollars, conditioned as required by said order of July 21, 1884, and that said bond was approved by and filed in the office of the clerk of this court:

Thereupon the said complainant, by his counsel, moved for an order in this behalf appointing the said Ethan A. Hitchcock permanent receiver in said cause, with the like powers and duties heretofore conferred upon him, the said Ethan A. Hitchcock, as provisional receiver herein.

Which motion *being* opposed by John W. Noble, Esq., on behalf of the said several parties by him as their counsel, appearing as aforesaid, and *being* supported by David P. Dyer, Esq., in behalf of the said several parties by him as their counsel, appearing as aforesaid.

And thereupon, after hearing arguments of counsel and upon reading and hearing affidavits submitted by said parties respectively for and against said motion, and after due deliberation thereon—

166 It is ordered, adjudged, and decreed that the said Ethan A. Hitchcock, who was by the said order made in this behalf on the 21st day of July, A. D. 1884, appointed provisional receiver of The St. Louis Ore & Steel Company, defendant herein, be, and he is hereby, appointed receiver of the said St. Louis Ore and Steel Company, with all and singular the powers, duties, and instructions in that behalf heretofore committed to him as such provisional receiver in and by said order of July 21st, 1884, the same being hereby continued and approved, except as herein or hereafter otherwise ordered, and said receiver is authorized to select and to employ such agents and clerks as he may find necessary for the due discharge of his duties, and to employ counsel, subject to the approval of the court or that of the circuit or district judge at chambers.

And it is further ordered, adjudged, and decreed that said receiver shall within sixty days give bond conditioned for the faithful discharge of his duties in the sum of not less than three hundred thousand dollars, with at least three good and sufficient sureties thereon, to be approved on due qualification before him by the clerk of the court or the court if in session.

And it further appearing that certain premiums required to be paid for the purpose of keeping up insurance on the property known as the Vulcan steel works, as provided for by the first mortgage deed of trust of Vulcan iron works of date May 24, A. D. 1875, in the bill of complaint mentioned, are in arrears, and which by the articles of consolidation in which the St. Louis Ore and Steel Company originated the last-named company assumed and promised to pay, it is further ordered that the said receiver do forthwith pay or provide for the payment of said premiums, and for that pur-

167 pose said receiver is authorized and directed to issue and use or otherwise apply and dispose of receiver's certificates for such sum or sums as necessary therefor, not exceeding three thousand five hundred dollars in all, at not less than par, payable at such time or times and bearing such rate of interest not to exceed eight per centum per annum as may be agreed upon with the parties entitled thereto, said certificates to be a first lien and payable out of the proceeds of any property and income of said St. Louis Ore and

Steel Company in charge and possession of said receiver as soon as received by him and upon thirty days' notice.

And it is further ordered, adjudged, and decreed that any money, claims, assets, or property that may come into the custody or under the control of said receiver as the proceeds of any interest and any interest or share itself said St. Louis Ore and Steel Company may now have or said Vulcan Steel Company or the Vulcan iron works or Oliver Garrison or the assigns of either of them, may have or may have had in the Bessemer Steel Company, Limited, said receiver shall hold and keep as a separate property and fund, subject to the further orders of the court, because claimed to be applicable to and to secure the payment, interest and principal, of the first-mortgage bonds of the Vulcan iron works described in the deed of trust by said works dated May 24th, 1875, made to R. J. Lackland and Timothy B. Edgar, and said receiver shall prosecute or cause to be prosecuted any and all actions, suits, or proceedings in the courts having jurisdiction or elsewhere to obtain, maintain, secure, and enforce the right to said interest or share or any proceeds thereof and shall take any steps necessary to this end.

168 And it is further ordered, adjudged, and decreed that the said receiver shall make out and file in the court on or before the tenth day of each month, in detail, — of his receipts and expenditures for the month preceding and a tabulated statement of all business operations during said preceding month, and such other reports as may be by the court or any judge thereof *be* from time to time ordered. The first report shall be filed on or before September 10th next, and shall cover the matters aforesaid from the present appointment, and then and there be made and filed a like report for the period covered by the provisional receivership.

And it is further ordered that Hon. B. Gratz Brown be, and is hereby, appointed special master to examine all such reports as shall be presented for examination and approval, subject to further examination and review by this court.

And it is further ordered, adjudged, and decreed that said Charles P. Chouteau and others, the bondholders of the Vulcan iron works acting with him and others, the creditors of said St. Louis Ore and Steel Company acting with him or for themselves, are hereby granted leave to intervene for their own interest, and with further leave and right to file herein a cross bill or bills as other pleadings on their own behalf, and all notices required or usual shall be given to said Charles P. Chouteau or his solicitors of record of all applications by said complainant or said receiver for any other or further orders herein.

DAVID J. BREWER,
Circuit Judge.

169 *Petition of Receiver. Filed August* 13, 1884.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } ss:

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants. } Number 2394. In Equity.

Now comes Ethan A. Hitchcock, receiver in the above-entitled cause, and respectively shows to the court—

That it appears from the books of account of said St. Louis Ore and Steel Company that there are outstanding bills payable discounted by said company, secured by sundry collaterals of personal property, the particulars of which are set forth in Exhibit "A," hereto annexed.

The total amount of said notes is two hundred and sixty-seven thousand four hundred and fifty dollars, held respectively by the parties mentioned in Exhibit "A." As security for said notes, said St. Louis Ore and Steel Company pledged as collateral to the persons holding them in quantities stated in Exhibit "A" 13,200 tons of pig-iron and 1,749 tons of steel rails; also $13,500 (par value) in the bonds of the Grand Tower and Carbondale Railroad Company, mentioned in the bill of complaint. Said pig-iron was estimated for the purpose of such pledges, a part of it at $16.00 and the remainder at $15.00 per ton, and said steel rails were pledged at the rate
170 of $30.00 per ton. All of said pig-iron and rails are represented by warehouse receipts given by the McPheeters Warehouse Company, in whose possession said property was deposited before said warehouse receipts were issued, and said property was pledged by transfer of said warehouse receipts in quantities, as stated in Exhibit "A," to the several parties holding said notes respectively, and said pig-iron and rails are in the actual possession of said warehouse company.

The undersigned believes and shows the court that said 13,200 tons of pig-iron are worth more than the rate or value per ton at which they were pledged as aforesaid, and that if reasonable time were given to sell the same a margin or difference of from one dollar to $1.50 per ton might be realized thereon, and, further, that said steel rails are worth more than $30 per ton, and with reasonable time might be sold for from $2 to $3 per ton over and above the debt secured by them, making a possible margin of $12,000 or $13,000 on said pig-iron and $3,500 to $5,000 on said steel rails if the same could be disposed of on favorable terms at private sale after paying the debts secured thereby.

The undersigned further states that of said notes mentioned in Exhibit "A" the four notes held by the Mechanics' bank, being in

all for the sum of $57,500, and the note held by the Boatsmen's savings bank, being $20,650.00, have become due. On two demand notes held by the Mechanics' bank—one for $10,000 and one for $25,000—interest was paid by the defendant company to July 1st, and the undersigned has arranged with the Mechanics' bank and the Boatsmen's saving bank to carry the several notes held by them, as per Exhibit "A," annexed hereto, until he can apply to the court for leave to pay interest thereon.

Another note for $25,000 (twenty-five thousand dollars) due on the 14th of August instant (Thursday next) is held in New
171 York, secured by pledge of 1,600 tons of pig-iron. The undersigned has telegraphed to the holders asking them to extend said note without the payment of interest, but has yet no reply, and fears that unless he be authorized to pay interest thereon for the next 30 or 60 days or longer said pig-iron will be sacrificed by sale under the terms of the pledge.

Other notes for the remaining amounts stated in Exhibit "A," annexed, will come due at dates therein mentioned, and the like danger of sacrifice of said collateral exists in respect thereto.

The undersigned has in hand in all about $3,500 in cash, and is advised that except by leave or directions of the court he would not be authorized to extend any of these notes by paying interest in advance thereon.

The undersigned therefore asks for directions from the court in this behalf and for such orders as will enable him, by paying interest in advance from time to time on the several notes referred to, to save the said collateral from sacrifice and, if possible, to realize whatever margin or value may exist over and above the debts secured thereby.

The undersigned further shows the court that he is advised that sundry attachment suits have been brought against the St. Louis Ore and Steel Company in the States of Illinois and Pennsylvania by the parties and for the amounts stated in Exhibit "B," hereto annexed; that in respect of some of these suits he is informed and believes that valid defenses to the same on behalf of said defendant company exist, and in others of said suits the interest of said defendant and of all concerned requires, as the undersigned is advised and believes, that proper inquiry should be made as to whether the amounts claimed are justly due. The undersigned is further advised that in aid of the attachment suits brought at Chicago
172 in the superior court of Cook county, Ill., writs of garnishment have been served upon the North Chicago rolling mills and upon the assignee of Messrs. Cherrie & Co. in respect of balances due from them for ore heretofore shipped by the defendant company amounting to many thousand dollars, but which balances are not yet ascertained between the parties.

The undersigned is further advised that there is grave question whether, as receiver appointed by this court and within its jurisdiction, he would be permitted to appear in or defend any of such suits in Illinois or Pennsylvania, and further states that in consequence of the proceedings in this cause said defendant company is without

means or ability to employ counsel to represent it in defending any of said suits.

The undersigned is therefore advised to and does hereby respectfully apply to this court for directions in repsect to said several attachment suits and for an order or orders authorizing and directing him, as receiver, in the interest of all concerned to employ and direct counsel to appear in said several suits and defend the same on behalf of and in the name of said St. Louis Ore and Steel Company, defendant, to the end that no judgment may be obtained therein, either against said company *and* against any garnishee thereof, except for such sums as the parties prosecuting said suits may be entitled to recover by right superior to that of the receiver herein.

The undersigned further also shows the court that there is now pending in the State and Federal courts in the city of St. Louis, Missouri, divers actions at law and suits in equity heretofore instituted against said St. Louis Ore and Steel Company, is some of which damages are claimed against said company and in others rights of property are involved; that he is advised that the
173 interest of all concerned require- that proper attention should be paid to the further defense of said suits, said claims being believed to be for the most part unfounded and the amounts claimed therein aggregating many thousand dollars; that in respect of said pending suits also the undersigned asks for such orders and directions from the court as shall be just and the interest of the parties concerned may require.

For ETHAN A. HITCHCOCK, *Receiver*,
HITCHCOCK, MADILL & FINKELNBURG,
His Solicitors.

174 EXHIBIT "A."

St. Louis Ore and Steel Company Collateral Notes.

AUGUST 11TH, 1884.

Due, date, Amount.	Held by Demand.	Secured by Mechanics' bank, $13,500
G. T. and Carbondale R. R. bonds		$10,000 00
Do. do.	1,600 tons pig-iron	25,000 00
Do., 7–12, do.	500 do.	7,500 00
Do., 7–9, do.	500 do. steel rails	15,000 00
Do., 8–10, Boatsmen's bank,	601 tons rails	20,650 00
Aug. 14, in New York,	1,600 do. pig-iron	25,000 00
Do. 17, Boatsmen's bank,	648 do. rails	19,300 00
Do. 30, do. do.	3,200 do. pig-iron	50,000 00
Sep. 9, Fourth Nat. B'k,	1,600 do. pig-iron	22,500 00
Do. 14, in New York,	1,600 do. do.	25,000 00
Do. 23, in New York,	1,500 do. do.	22,500 00
Oct. 10, in New York,	1,600 do. do.	25,000 00
		$267,450 00

175 EXHIBIT "B."

Attachment Suits Against St. Louis Ore and Steel Company, Jackson County, Illinois.

		Returnable.
Ward & Neal, Murphysboro', Ill.	$1,926 00	August 11.
A. G. Leonard & Co., Chicago	976 72	
W. R. Rice & Co., St. Louis	91 65	
E. C. Meacham Arms Co., St. Louis	943 27	August 11.
Corey & Clay, Murphysboro'	134 44	July 29.
James H. Martin, St. Louis	13,312 12	August 11.
Henry Heil, St. Louis	101 80	July 31.

Chicago, Cook county, Illinois.

Iron Mountain Company	$19,784 66	1st Monday	Aug.
Joliet Steel Company	17,828 85	Do.	do.
E. C. Meacham Arms Co.	943 09	Do.	do.

Sharpsville, Pa.

J. M. Shoomaker	$3,500 00
St. Louis, Salem and L. R. R. R., assignment Sligo Furnace Company	3,000 00

176 In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants.
} Number 2394. In Equity.

TUESDAY, *August 12th*, 1884.

In chambers, before the Honorable David J. Brewer, circuit judge.

Now comes Ethan A. Hitchcock, heretofore appointed receiver in this behalf, and presents his petition to the court, asking for directions and authority in respect of certain personal property belonging to The St. Louis Ore and Steel Company, defendant, heretofore pledged by said defendant as security for certain notes by it executed, and also in respect of certain actions and suits against said company now pending in the States of Illinois and Pennsylvania, in which attachments have been levied upon the property and credits of said defendant, and certain actions against said defendant now pending in the State and Federal courts at St. Louis, Missouri.

And it appearing to the court from the averments of said petition that prompt action in that behalf ought to be taken by the said receiver to prevent loss to the parties in interest, it is therefore ordered, adjudged, and decreed that the said receiver be, and he is

hereby, authorized to take such action as may be necessary to prevent a sale of any of the pig-iron, steel rails, and bonds pledged as collateral, as set forth in said petition this day filed by him, by procuring from the several parties holding said collateral notes an extension of said notes for such time from the maturity thereof respectively, not exceeding ninety days, as may be agreed
177 on, and for that purpose said receiver is authorized out of any moneys in his hands to pay interest on said notes respectively, in advance, for not exceeding ninety days and at a rate not exceeding eight per cent. per annum; and said receiver is further authorized from time to time, as he may find opportunity so to do, to sell at private sale, for the best price obtainable therefor, but subject always to the approval of the court or of the circuit or district judge thereof, at chambers, the said pig-iron and steel rails mentioned in said petition and so pledged as aforesaid, applying the proceeds of such sales to the payment of said indebtedness and accounting for the surplus, if any, as assets in his hands, all things done by him hereunder to be reported in full to the court;

And it further appearing to the court that divers actions and suits heretofore instituted against said St. Louis Ore and Steel Company, defendant, in the State of Missouri, and also that in the States of Illinois and Pennsylvania divers suits have been brought against said company, in aid of which the property and credits thereof in said States respectively have been attached, and that just defenses exist or may exist to said suits or some of them:

It is further ordered, adjudged, and decreed that said receiver be, and he is hereby directed and authorized to employ competent counsel in said several States above mentioned, who shall without delay inquire into the merits of all actions or suits pending in any court in said States respectively to which said company, defendant herein, is or may be a party, and shall, on behalf and in the name of said St. Louis Ore and Steel Company, defendant, under the direction of said receiver, appear in said suits respectively for such purposes and to such extent and shall take such steps and proceedings and make such defense therein respectively as
178 the said receiver may be advised and believes is requisite for the protection of the interests and property of said company and the rights of the several parties to this cause, and that said receiver report to this court all things done by him as authorized by this order.

DAVID J. BREWER,
Circuit Judge.

August 12th, 1884.

179 *Petition of Receiver.* "*A.*" *Filed August* 25, 1884.

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants.
} Number 2394. In Equity.

Now comes Ethan A. Hitchcock, heretofore appointed receiver of The St. Louis Ore and Steel Company, defendant, and respectfully shows to the court—

That in conformity with the order of this court, made in this behalf on the 7th day of August instant, the undersigned, to wit, on the 19th day of August instant, presented to the clerk of said court his bond, conditioned for the faithful discharge of his duties as such, in the penal sum of $300,000.00, with three sureties duly qualified before the clerk of said court, which bond was by said clerk approved and filed.

That the undersigned is preparing with all diligence an inventory of the property of said defendant company which has come into his charge and possession as said receiver and will file the same without unnecessary delay.

The undersigned further shows to the court that by an order made in said cause on the 21st day of July, 1884, continued in force by said order made August 7th, 1884, the undersigned was directed, as receiver of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company, to take possession of the property of said companies respectively, and to manage, control, and operate said railroad and the ore and coal mines of said St.

180 Louis Ore and Steel Company, and to carry out and perform the contracts of said last-named company for the purchase and sale of steel rails, and to preserve and protect all the property of said corporations defendant; that the undersigned has diligently endeavored, in obedience to said orders, to carry out said contracts of said ore and steel company for the purchase and sale of steel rails, as hereinafter stated, and in view of the action taken by the parties to said contracts now asks further instructions and authority from the court in that behalf with reference to the following state of facts:

On the 21st day of July, 1884, there were outstanding two contracts for the sale of steel rails made by said St. Louis Ore and Steel Company with the Missouri Pacific Railway Company, copies of which contracts are herewith shown to the court. One of said contracts was dated November 6, 1883, as per copy thereof, Exhibit "A," herewith shown to the court, and provided for the sale and delivery to said railway company of 24,000 tons of steel rails in quantities of 2,000 tons per month from January to December, 1884, inclusive, for which said railway company agreed to pay for each delivery of

rails, on receipt of bills of lading and invoice, at the rate of eighteen dollars per ton cash and one ton of old rails for each ton of steel delivered. Said contract further provided as follows: "Deliveries of steel rails as above are to be subject to the detentions that may occur to said St. Louis Ore and Steel Company in consequence of storms, fire, strikes, or any other causes beyond its control, the option being reserved to said steel company to substitute equally good steel rails as their own manufacture during any such period of interruption of operation at their own works."

The other of said contracts was dated November 19, 1883,
181 as per copy thereof, marked Exhibit "B," now shown to the court, whereby said ore and steel company sold to said Missouri Pacific Railway Company 18,000 tons steel rails to be delivered at the rate of about 1,500 tons per month, commencing in January and ending in December, 1884, for which said purchaser agreed to pay for each delivery of 1,500 tons in cash on the 20th day of the month; succeeding month delivery at the rate of $37.50 per ton. Said contract of November 19th further provided as follows: "Deliveries of steel rails as above are to be subject to any detentions that may occur to the said St. Louis Ore and Steel Company in consequence of storms, fire, strikes, or any other causes beyond its control." The St. Louis Ore and Steel Company have the right under this contract to substitute other steel rails of equal quality with their own make for any deliveries which it is not convenient for them to make or to purchase steel rails from other mills and deliver this contract when by so doing they can make it to their advantage in the ore trade, resulting in freight being given to the purchaser. It was further provided in each one of said contracts that said purchaser might appoint an inspector to inspect said rails at the works or at any time during process of manufacture, with power to reject any that in his judgment should not be in accordance with the specifications given by the purchaser.

The undersigned further states that under said last-mentioned contract of November 19, 1883, there had been delivered in all and accepted by the Missouri Pacific Railway Company up to July 21, 1884, the quantity of 8,564 tons and 137 pounds, leaving to — delivered thereunder the quantity of 9,435 tons and 2,103 pounds. The undersigned further states that about or shortly before the 1st of August, 1884, the said Missouri Pacific Railway Company
182 ordered from the undersigned receiver, as receiver herein under said contract of November 19, 1883, a further delivery of 2,200 tons of rails for the use of and to be delivered to the receivers of the Wabash, St. Louis and Pacific Railway Company, operating same under the orders of this court. The said receivers of the Wabash, St. Louis and Pacific Railway Company, to wit, Solon Humphreys and Thomas E. Tutt, agreed with the undersigned as receiver to pay for said rails at said contract price of $37.50 per ton—that is to say, to pay $35.00 per ton therefor in cash to the parties making said rails, and to pay to the undersigned receiver the balance of $2.50 per ton, less such freight charges as might be found due on said rails, if any. The undersigned transmitted said

order for 2,200 tons rails for said Wabash railway to the Lackawanna Iron and Coal Company, to be manufactured by said company under its contract with the St. Louis Ore and Steel Company hereinafter mentioned, at the price of $35.00 per ton, and the undersigned is informed and therefore states to the court that all of said 2,200 tons of rails have been made by said Lackawanna Iron and Coal Company and by it shipped in accordance with the directions of the said receiver of the Wabash railway.

The price payable for said 2,200 tons of rail- will be due from said receivers of the Wabash railway on the 13th of September next, and the undersigned expects to collect the same and therefrom to pay said Lackawanna Iron and Coal Company the amount due them for manufacturing said rails.

No other orders have been received for delivery of rails under said contract of November 19, 1883, except as above.

The undersigned further states that under said first-mentioned contract of November 6, 1883 (Exhibit A), there had been delivered to and accepted by the Missouri Pacific railway up to July
183 21, 1884, the total quantity of 13,618 tons and 1,982 pounds, leaving 10,381 tons and 258 pounds yet to be delivered under said contract, and the undersigned states that out of the total quantity of upwards of 22,000 tons steel rails which had been delivered to and accepted by the Missouri Pacific Railway Company under said contracts of November 6th and November 19th, 1883, as above stated, 19,538 tons and 353 pounds thereof were manufactured for the St. Louis Ore and Steel Company by other mills under subcontracts with the St. Louis Ore and Steel Company, hereinafter mentioned, namely, by the North Chicago Rolling Mill Company about 7,350 tons, and by the Joliet Steel Company about 1,017 tons, and by the Lackawanna Iron and Coal Company about 11,170 tons, all of which rails were accepted by said Missouri Pacific Railway Company from said other mills, respectively, with knowledge of such manufacture and without objection on that account. On July 30, 1884, the undersigned received from said Missouri Pacific Railway Company orders in writing, addressed to him as provisional receiver, for 2,800 tons of said rails in four lots of 500 tons each, to be consigned as therein directed, and a further order for three car-loads of 56-pound steel rails, Missouri Pacific standard, which would be about 45 tons more.

The undersigned, as receiver in this behalf, thereupon ordered from the North Chicago Rolling Mill Company the quantity of 1,500 tons of said rails for August delivery, to be manufactured by said rolling mill company under a contract with the said rolling mill company made by said ore and steel company, under date of December 1, 1883, and ordered the further quantity of 500 tons, and also said three car-loads of 56-pound rails above mentioned from the Joliet Steel Company of Joliet, Illinois, under a contract with said Joliet Steel Company made by the St. Louis Ore and
184 Steel Company under date of January 16, 1884. Said contracts of date December 1, 1883, and January 16, 1884, respectively, are now here shown to the court, as also said contract

above referred to made by the said St. Louis Ore and Steel Company with the Lackawanna Iron and Coal Company of Scranton, Pennsylvania, which bore date the 22rd day of December, 1883, and provided for the manufacture of 18,000 tons of steel rails. By said three contracts last mentioned said companies respectively agreed with said St. Louis Ore and Steel Company to manufacture, in all, 39,500 tons of steel rails such as therein specified (and the specifications whereof corresponding in all respects with the specifications for rails *continued* in said contracts of November 6th and November 19th, 1883, with the Missouri Pacific Railway Company), for the price of $35.00 per ton in each case, payable in cash, to wit, under the Chicago Rolling Mill Company contract on the 10th day of the month for rails delivered during the previous month, and under the Joliet Steel Company's contract on the 15th day of the month following the month of delivery, and under the Lackawanna Iron and Coal Company's contract on the 20th of the month following month of delivery.

Said orders, as well *as* for said 2,200 tons of rails for the use of said Wabash Railway Company as for said 2,045 tons ordered for its own use by the Missouri Pacific Railway Company as aforesaid, were transmitted, respectively, to said Lackawanna Iron and Coal Company and said North Chicago Rolling Mill Company and said Joliet Steel Company by the undersigned, as receiver in this behalf, in obedience to the said orders of this court, whereby he was directed, as aforesaid, to carry out and perform the contracts of said St. Louis Ore and Steel Company for the purchase and sale of
185 steel rails, the undersigned being advised that it was his duty not to endanger the performance of said contracts by any delay on his part in endeavoring to execute the same. At the same time the undersigned receiver endeavored to provide for the prompt and certain payment to said parties manufacturing said rails of the sums payable therefor by making such arrangements with the Missouri Pacific Railway Company as would enable him to apply in payment for such manufacture the sums payable by said railway company under its said contracts of November 6 and November 19, 1883, the St. Louis Ore and Steel Company having already made contracts for the sale to responsible parties of all old rails respectively by it from the Missouri Pacific Railway Company under said contract of November 6, 1883, at the price of $20 per ton, and such old rails being therefore equivalent in the hands of the undersigned to cash at that price.

The undersigned was able to and did make satisfactory arrangements for the payment of the Lackawanna Iron and Coal Company for 2,200 tons ordered as aforesaid for the use of the Wabash railway by obtaining from Messrs. Humphreys and Tutt, receivers of said Wabash railway, by their authorized agent, James F. How, their agreement in writing to pay for the same as above mentioned.

In respect of said 2,045 tons ordered for its own use by said Missouri Pacific Railway Company under date of July 30th, 1884, the undersigned on August 1, 1884, addressed to D. S. A. Smith, local

treasurer of said railway company in St. Louis, a letter, of which a copy is herewith shown to the court, inquiring whether said railway would be willing to make payments on the tenth day of September, 1884, for said quantity of about 2,000 tons rails ordered on July 30th, as above stated, the undersigned desiring thus to make
186 sure of providing for the payment to said North Chicago rolling mill and said Joliet Steel Company respectively of the amounts which would be due them in September for rails delivered in August.

To this inquiry the treasurer of said railway company replied on August 2d, 1884, by letter herewith shown to the court, that he could make no promise relative to paying bills for steel rails until some satisfaction was guaranteed him touching some $30,000 of freight and other bills due the Missouri Pacific Railway Company by the St. Louis Ore and Steel Company. The date fixed by the court for hearing of parties interested touching the appointment of a permanent receiver, to wit, August 7, 1884, being at hand, the undersigned did not feel authorized to take further action until that question was disposed of by the court. On Thursday, August 7th, at Leavenworth, Kansas, the undersigned was appointed permanent receiver, and the order so appointing him as of August 7, was received at St. Louis on August 12th. The undersigned at once resumed negotiations with the Missouri Pacific railway, through R. S. Hayes, its first vice-president, requesting a definite reply to his letter of August 1st to the treasurer of said company above mentioned.

Further correspondence ensued between the undersigned as receiver and said Missouri Pacific Railway Company, now here shown to the court. In substance the undersigned advised said railway company that he was directed as such receiver to carry out the contracts of said St. Louis Ore and Steel Company for the purchase and sale — steel rails and had therefore made inquiry touching the payments by said railway company for rails ordered, to which said railway company in substance replied that they were ready to carry out said contracts strictly according to their terms, but would
187 no longer accept steel rails from other makers on the ground that the ore traffic referred to in one of the contracts had ceased upon their roads. To this the undersigned, upon the advice of his counsel touching the proper construction of said contracts of November 6 and November 19, 1883, above named, replied that he was advised that the position taken by said railway company was not tenable, and further inquired whether, in case he, said receiver, should be able to resume shipments of ore from the Pilot Knob property over said railroad, said railway company would then be prepared to accept rails made at the mills from which they had already received the same. To this inquiry said railway company declined to reply, on the ground that it was a merely hypothetical question.

Pending said correspondence with said railway company, the undersigned also made overtures to said railway company, subject to the approval of the court and consent of other parties interested, for

an adjustment of the claim of all parties interested *of* the contracts above referred to, whereby said railway company, on the one hand, should be released from its obligation to take further deliveries of rails under said contracts of November 6 and November 19, 1883, and said ore and steel company be released, on the other hand, from said contracts for rails with said three rolling mill companies above named upon the basis of the difference between the present market price of steel rails such as contracted for, estimated at about $31 per ton, and the price thereof mentioned in said contracts respectively and upon terms which the undersigned believed would be just to all parties; but said overtures were not accepted by said railway company.

The undersigned further states that by letter dated August 6, 1884, received by him, the undersigned was notified by said North Chicago Rolling Mill Company that they were ready and
188 willing to carry out their said contract of December 1, 1883, above mentioned, for manufacture and delivery of steel rails upon the terms of cash payment therein mentioned, and that for failure on the part of said St. Louis Ore and Steel Company to carry out said contract they would claim damages, and afterwards said North Chicago Rolling Mill Company requested an explicit statement from the undersigned whether he would be prepared to pay in cash on the 10th of each month following delivery thereof for rails ordered by him under said contract. The undersigned replied in substance that, under the orders of the court, he forwarded the orders for rails received from the Missouri Pacific Railway Company; that he was not at present in possession of money sufficient to pay cash for said rails when manufactured, but that he was advised that the court had power to make provision therefor, and it was to be supposed that whatever orders were necessary in that behalf would be made by the court; to which said North Chicago Rolling Mill Company replied in substance, under date of 19th of August instant, that they are ready to carry out their contract promptly upon being notified by the undersigned that he is prepared to carry out the same, and that at any time the undersigned will advise them, said rolling mill company, that he is prepared to pay for steel rails in cash, as provided in the contracts with the St. Louis Ore and Steel Company, the rails will be promptly made and delivered to such parties as the undersigned may direct.

The undersigned further states that similar inquiries were orally made of him by the Joliet Steel Company in respect of the 500 tons and three car-loads ordered from them as above stated; to which the undersigned made like replies in respect of his duties and action as receiver, to wit, on or about the 12th of August. Since
189 said time the undersigned has not been advised by said Joliet Steel Company what action they propose to take.

The undersigned therefore prays the court for further instructions in respect of his duties as receiver touching said contracts for the purchase and sale of steel rails, in view of the fact that the Missouri Pacific Railway Company, on the one hand, claims that it is not under obligation to accept steel rails made elsewhere than at

the works of the St. Louis Ore and Steel Company, on the ground that shipments of ore from the Pilot Knob mines of said company over its railroads have for the present ceased, and in view of the further fact that the parties with whom said subcontracts for the manufacture of rails were made, as above stated, by said St. Louis Ore and Steel Company, demand that all rails made by them shall be paid for in cash, as in said contracts provided for.

The amounts payable to the North Chicago Rolling Mill Company for 1,500 tons of rails ordered by the Missouri Pacific railway on July 30th, and which orders were transmitted to said North Chicago Rolling Mill Company by the undersigned, as above stated, would be $52,500, which (assuming that said rails were delivered during the month of August) would be payable on the 10th of September next, and the amount payable to the Joliet Steel Company for the 545 tons for which orders were received from said Missouri Pacific Railway Company for August delivery and transmitted to said Joliet Steel Company by the undersigned, as above stated, would be $19,075, payable, if said rails were delivered during this month, on the 15th of September next, making in all $71,075 payable for said 2,045 tons — rails (if delivered in August) in September at the dates mentioned. The undersigned has not in hand or is not likely by the dates mentioned to realize from any assets of said St. Louis Ore and Steel Company means for making said payments.

190 All his effors*t* to make an arrangement with said Missouri Pacific Railway Company by which they should accept and make payment for said rails, so as to provide such means therefor, having failed, as above stated, and the said railway company having further declined to accept any rails under said contracts if made at other mills, on the ground above mentioned, the undersigned finds himself unable to further execute the orders of the court in respect of the performance of said contracts of the St. Louis Ore and Steel Company for the purchase and sale of steel rails, and therefore prays further instructions in that behalf. In reference to the assets of said St. Louis Ore and Steel Company now in charge of the undersigned and likely to be available for such payment, as mentioned, the undersigned receiver would further state that on the 12th day of August instant, as stated in his petition on that date filed herein, he had in cash in hand as receiver the sum of $3,602.67, since which he has collected the sum of $1,074.04, making in all the sum of $4,679.71, out of which, under advice of counsel and in order to secure delivery of about 1,250 tons, as near as can be stated, of Pilot Knob ore previously shipped to Sulphur Springs Landing, near St. Louis, under an existing contract of the St. Louis Ore and Steel Company with Carnegie Brothers, Limited, of Pittsburgh, and being valued about $4,500.00, the undersigned paid on August 13th to the Missouri Pacific Railway Company, operating the St. Louis, Iron Mountain & Southern Railway, the sum of $1,164.78 freight due on said ore, and has also since then paid other sums for interests on collateral notes, attorney's fees, labor claims, and freight on coal shipped

before July 21, 1884, amounting in all to $1,090.52, leaving cash balance in hand on August 21st the sum of $2,421.41.

What amount of accounts and bills receivable are due to said company the undersigned is not yet able to definately state,
191 the accounts of said company not yet being fully made up because of delay in statements from third parties, already applied for by him, and without the necessary information cannot be had.

Of other personal assets which may be made available, the undersigned states (by way of partial report, pending completion of the inventory now in progress) that he has under his charge the following property, which is not pledged or encumbered and which might be sold:

1,792 tons Pilot Knob ore at St. Louis.

615 tons Iron Mountain ore at St. Louis.

1,500 tons Pilot Knob iron ore at Sulphur Springs Landing.

3,000 tons iron ore at Cedar Hill, near Pilot Knob, Mo.

545 tons pig-iron at Pilot Knob, Mo.

1,547 tons pig-iron in Vulcan steel works' yards, St. Louis.

5½ tons spiegel and 42 tons ferro-manganese at Vulcan steel works' yards, St. Louis.

544 tons steel rails (seconds) at Vulcan steel works' yards, St. Louis.

167 tons ingots and blooms at Vulcan steel works' yards, St. Louis.

680 tons of steel and cast iron at Vulcan steel works' yards, St. Louis.

431 tons iron rolls and casting (intended for Vulcan mill) at Vulcan steel works' yards, St. Louis.

To some extent the above weights have been of necessity estimated.

The aggregate value of the property above mentioned, including the iron castings, which would be available for the Vulcan mill and otherwise must be regarded as scrap, the undersigned estimates, at present market prices, at not less than $75,000. Of the 1,547 tons pig-iron at the Vulcan yard above mentioned, 600 tons have been sold by the undersigned—500 tons at $14 and 100 tons at $15 per ton, cash on delivery, being the best price that could be ob-
192 tained for the same after diligent inquiry, and for which the undersigned asks the approval of the court. The undersigned further shows to the court that, in order to sell the ore and pig-iron above mentioned, whether for cash or on the usual terms of 30 or 40 days' credit for ore and four months for pig-iron, it is necessary for him to be authorized to sell the same in the usual manner, through a broker, and to accept promptly any suitable offer made therefor; that if it be required that every such sale be referred to the court for approval it would be impossible to make such sales, and he therefore prays authority to sell said ore and pig-iron above mentioned at current market prices, in the usual manner, according to his best judgment, as opportunities may arise.

All the personal property of said St. Louis Ore and Steel Company in Jackson county, Illinois, including the stock of goods in

the store, mules, and other movable property, were levied on and taken possession of by the sheriff of said county in the attachment suits brought there by creditors of said company on the 21st, 22d, and 25th of July, 1884, as the undersigned is informed and therefore states, except four barges of coal, which the undersigned obtained possession and from which he expects to realize in all from $2,000 to $2,500.

The undersigned further states that, as receiver herein, he has taken charge of certain personal property belonging to said Ore and Steel Company at Pilot Knob, Missouri, of which an inventory is in preparation. Included therein are 35 mules, 11 horses, 2 oxen, and also wagons, harness, mining and other tools and implements, and also a stock of assorted goods, consisting of dry goods, groceries, boots and shoes, and general merchandise such as kept in a country store.

The estimated value of said stock of goods now remaining on hand is between seven and eight thousand dollars. Under
193 the orders heretofore given to the undersigned sales have been made from said goods to miners and other former employees of said company, the amounts so sold being credited on amounts due them for labor and wages and heretofore ordered to be paid by the undersigned. The undersigned respectfully asks instructions from the court in respect of the further disposition of said personal property at Pilot Knob above mentioned, being advised that in order to sell at fair prices the remaining stock of goods on hand it will be necessary from time to time to replenish the stock of groceries heretofore kept, which is about exhausted.

Besides the personal property at Pilot Knob above mentioned, the undersigned has taken charge of one locomotive switch-engine and a large quantity of movable machinery, tools, and implements and mining materials and supplies, all acquired and used by said company for its mining operations, which would be indispensible therefor whenever the business of mining should be resumed at Pilot Knob, but which could not be sold there except at a great sacrifice.

Under the order of court made in this behalf on the 12th of August instant, the undersigned made inquiry and employed counsel to represent said St. Louis Ore and Steel Company in certain attachment suits brought against said company in Chicago in the superior court of Cook county, Illinois. Referring to his separate report on this subject for details, the undersigned here states that four such suits were brought, namely, three suits brought on July 21, 1884—one by the Iron Mountain Company of St. Louis, Missouri, for $19,784.66 for ore purchased by the defendant; one by the Joliet Steel Company for $7,777.07 for steel rails delivered to the defendant under the steel contract hereinbefore mentioned; one by said Joliet Steel Company for $10,051.78 for alleged advances for freight charges paid by said plaintiffs, but which claim the undersigned
194 believes to be without merit; said fourth attachment suit being brought on July 22, 1884, by the E. C. Meacham Arms Company of St. Louis, Missouri, for $943 for goods sold, being the

identical demand, as the undersigned is informed and believes, for which said Meacham Arms Company also brought an attachment suit on July 21st in Jackson county, Illinois.

Under the writs of attachment issued in aid of these suits the North Chicago Rolling Mill Company and R. M. Cherrie's assignee, above mentioned, were summoned as garnishees, which garnishment suits are pending, and until the determination thereof it is not probable that the undersigned can realize anything from any claims against said garnishees on the part of said St. Louis Ore and Steel Company.

In respect to the classes of demands against said St. Louis Ore and Steel Company already ordered to be paid by him, the undersigned would state that he has applied nearly all the money which has come into his hands as receiver to the payment of claims for miners' and laborers' wages earned and unpaid at Pilot Knob, amounting in all to about $31,000, besides the further amount of about $6,000 of similar claims which he has paid by sales to said claimants of goods from said company at store at Pilot Knob. The amount remaining due and unpaid for wages of miners and laborers up to August 7th, when the undersigned was appointed permanent receiver, since which date no wages have accrued except those of agents employed at the furnace and in taking care of the property, amount, as near as can at present be estimated, to the following:

At Pilot Knob, about $5,000, besides charcoal claims from $8,000 to $10,000.

At Grand Tower, as estimated, about $10,000.

These labor demands should be paid as soon as possible, the persons holding the same being in many cases in actual want,
195 for which reason the undersigned asks authority to sell the unpledged ore and pig-iron above mentioned as promptly as possible, through brokers, at market prices, in the usual manner; and if the present depressed condition of the iron market should prevent or delay such sales, the undersigned asks authority to raise the money necessary for that purpose by issuing receivers' certificates in such form as the court may prescribe to an amount not exceeding $20,000.

In reference to contracts for iron ore not yet fulfilled, the undersigned further shows to the court—

That on December 13, 1883, said St. Louis Ore and Steel Company made a contract in writing, now here shown in the court, with R. M. Cherrie (doing business as Cherrie & Co.), of Chicago, Illinois, by which said steel company sold to said Cherrie 100,000 tons of Pilot Knob iron ore, deliverable between December 1, 1883, and December 31, 1884, of which about 2,500 tons were delivered and accepted in December, 1883, and 10,000 tons per month were to be delivered up to May, 1884, inclusive, and the remaining 47,500 tons were to be delivered in equal monthly quantities as near as practicable during the rest of 1884. Under said contract iron ore was delivered and accepted up to and including the month of June, 1884, in quantity about 47,800 tons, as near as can be estimated, the reports for June deliveries not yet being received, leaving about

52,000 tons of ore yet to be delivered under said contract after June 30th. On July 3, 1884, said Cherrie & Co. made a voluntary assignment for the benefit of creditors to R. R. Jenkins, of Chicago, after which date no shipments of ore under said contract have been made to said Cherrie & Co. or to said assignee, but the undersigned, as receiver in this behalf, has notified said assignee of Cherrie & Co. of the quantity of ore remaining to be delivered under said
196 contract, inquiring of him whether he would receive and pay for same, to which no answer has yet been received.

In the month of February, 1884, said St. Louis Ore and Steel Company made another contract with Carnegie Bros. & Company, Limited, of Pittsburgh, Pennsylvania, for the sale of 50,000 tons Pilot Knob ore, deliverable at Sulphur Springs, Missouri, in quantities of 5,500 tons per month. Under said contract was delivered and accepted at Sulphur Springs Landing, up to July 13, 1884, in all the quantity of 19,921 tons of said ore; said contract was contained in letters between said parties thereto and was modified by further correspondence in the month of July, 1884, at the request of said Carnegie Bros. & Company, Limited, so that the monthly deliveries after July 1, 1884, should be reduced one-half, but the quantities undelivered during the remainder of 1884 to be delivered in like monthly quantity in 1885 on condition that if the market price of said ore should then advance a correspondingly higher price should be paid; said correspondence is now here shown to the court.

Since July 13, 1884, further deliveries of ore under said contract have been made, partly by said steel company and partly by the receiver, the undersigned, amounting in all, as near as can be estimated, to about 3,000 tons, and the quantity of 3,000 tons of ore now at Cedar Hill, near Pilot Knob, as above mentioned, is suitable for further delivery under said contract.

The undersigned is informed that on July 23, 1884, said Carnegie Bros. & Company, Limited, were summoned as garnishees of the St. Louis Ore and Steel Company in an attachment suit brought in the court of common pleas of Alleghany county, Pennsylvania, at Pittsburgh, by the Iron Mountain Company of St. Louis, Missouri, the demand sued for being $19,656; also that on the 25th of July,
197 1884, said Carnegie Bros. & Company, Limited, were garnished as debtors of the St. Louis Ore and Steel Company in another attachment suit brought by W. H. Brown's Sons, of Pittsburgh, in the same court for the sum of $5,035.87, said two demands together amounting to more than the balance estimated to be due from said Carnegie Bros. & Company, Limited, to said St. Louis Ore and Steel Company for ore delivered under said contract at the date of said attachment.

The undersigned further states that by contract in writing, under date of March 20, 1884, the Riverside iron works of Wheeling, West Virginia, contracted with said St. Louis Ore and Steel Company for 7,500 tons of Pilot Knob iron ore also to be delivered on the river bank at Sulphur Springs, Missouri, during the year 1884, deliverable as called for on five days' notice from the buyer.

Under said contract there had been delivered, accepted, and paid for before July 21, 1884, in all 4,089 tons, leaving something over 3,400 tons of ore yet to be delivered during the remainder of this year as called for by said Riverside works.

The undersigned further states that he took possession of the property and mines of said company at and near Pilot Knob, Missouri, on the 22d of July, 1884, under his appointment as provisional receiver; that on July 30th he directed the mining of ore to cease until further orders should be received in respect thereof from the court, and has not since resumed mining operations. The blast furnace, which was in operation at said date, was continued in operation somewhat longer in order to use up the ore then on hand in making pig-iron, but said furnace has since then been blown out and is not now in operation.

The undersigned asks instructions and authority from the court in reference to continuing the mining of ore, with a view to
198 fulfilling said existing contracts above mentioned and such other contracts for ore, if any, as may be offered to him, inquiries having been made for said ore by other parties. At the prices payable for said ore under said existing contracts, the undersigned believes that said operations can be conducted at a profit, the rate thereof depending in part on the amount mined and shipped. In order to preserve said Carnegie contract it will be necessary to ship an average of 100 tons of ore per day, which quantity can be mined at a profit, and in order to preserve the Riverside works contract it is also necessary for the undersigned receiver to be prepared to ship ore as called for under said contracts on five days' notice. For carrying out said contracts the only money necessary to be provided before payments for said ore would be due would be the freight on said ore to Sulphur Springs, Missouri, at the rate of $1.00 per ton, the cost of mining not being necessarily payable until after returns are received from ore.

But without further instructions from the court the undersigned has not felt authorized to resume the business of mining.

In view of the importance of said contracts for the purchase and sale of steel rails before mentioned and of the questions which have arisen in respect thereof, as above stated, the undersigned receiver respectfully asks for instructions as to his duties in reference thereto.

The undersigned also asks instructions touching the further prosecution of ore-mining on said Pilot Knob property in view of said existing ore contracts and of the probable demand for said ore from other parties, and also because of the expenses unavoidably incurred in preserving so large a property without return therefrom if all said operations should be suspended.

The undersigned also prays for further instructions in re-
199 spect of the payment of the several classes of demands mentioned in the order of this court made on July 21, 1884, and as to the order or payment thereof; also that proper orders may be made for reference to the special master appointed in this cause of all intervening petitions by persons having claims against said

company and as to the payment of demands so presented, referred, and approved, and for such other instructions as will enable him to fulfill the duties committed to him in this behalf.

For E. A. HITCHCOCK, *Receiver*,
HITCHCOCK, MADILL & FINKELNBURG,
Solicitors.

200 EXHIBIT "A."

Memorandum of Sale.

ST. LOUIS, *November 6th*, 1883.

Sold to the Missouri Pacific Railway Company (24,000) twenty-four thousand tons of first quality steel rails, to be made and delivered as follows, to wit:

Weight and pattern.—The rails to weigh from 52 to 53 pounds per lineal yard (heavier if the Missouri Pacific people so desire), both weights inclusive, and to be of the standard pattern now in use by the Missouri Pacific railway and leased lines, including the Wabash railway.

Drilling.—The rails to be drilled for splice-bolts, with round holes of such diameter and in such position as the purchaser may prescribe.

Delivery.—The rails are to be delivered on cars to be furnished by the purchaser at the mill of the St. Louis Ore and Steel Company in South St. Louis, at the rate of (2,000) two thousand tons per month, commencing in January and ending in December, 1884.

Price and terms.—The purchaser is to pay for each delivery of rails in prompt cash, on receipt of bills of lading and invoice, at the rate of ($18.00) eighteen dollars per ton cash and one ton of old rails for each ton of steel so delivered, the old rails to be of such weight as may now be in the track of the purchaser, not exceeding two hundred tons of narrow-gauge rails to be included. About 6,000 tons of the old rails are to be delivered at such points on the Wabash system east of the river as the St. Louis Ore and Steel Company may direct, the balance of the old rails to be delivered f. o. b. cars at Carondelet or St. Louis, as the St. Louis Ore and Steel Company may direct.

Exceptions.—Deliveries of steel rails as above are to be subject to the detentions that may occur to the said St. Louis Ore and
201 Steel Company in consequence of storms, fires, strikes, or any other causes beyond its control, the option being reserved to said steel company to substitute equally good steel rails as their own manufacture during any such period of interruption of operation at their own works.

Weighing of old rails.—The old rails shall be weighed at point of delivery and the gross tare and net weight of each car be furnished the St. Louis Ore and Steel Company, and should there be any shortage in weight the steel company shall have the privilege of appointing an agent to weigh with the railway company, and the joint report of the agents of both to be accepted as final.

Inspection.—The purchaser, if it so desire, may appoint an inspector who shall have power to inspect, at the works or at any time during process of manufacture, the rails to be furnished under this contract, with power to reject any that in his judgment are not in accordance with the specifications given by the purchaser, and his decisions as to whether they are in accordance with the requirements of said specifications shall be final.

Guaranty.—The St. Louis Ore and Steel Company guarantees the said rails to the extent of agreeing to deliver a new rail for each rail that may fail within five years from date of delivery in consequence of defects in its material or manufacture, the rail so replaced to be returned to the St. Louis Ore and Steel Company.

Accepted.

ST. LOUIS ORE AND STEEL COMPANY,
(Signed) By O. L. GARRISON, *Secretary.*
THE MISSOURI PACIFIC RAILWAY COMPANY,
By JAMES B. HOW, *Assistant Secretary.*

202 EXHIBIT "B."

Memorandum of Sale.

ST. LOUIS, *Nov.* 19, 1883.

Sold to the Missouri Pacific Railway Company eighteen thousand (18,000) tons of first quality of steel rails, to be made and delivered as follows:

Weight and pattern.—The rails to weight from 52 to 63 lbs. per lineal yard (heavier if the Missouri Pacific people so desire), both weights inclusive, and to be of the standard patterns now in use by the Missouri Pacific railway and leased lines, including the Wabash railway, and in accordance with the specifications attached thereto.

Drilling.—The rails to be drilled for splice-bolts, with round holes of such diameter and in such position as the purchaser may prescribe.

Delivery.—The rails to be delivered on cars to be furnished by the purchaser at the mill of the St. Louis Ore and Steel Company in South St. Louis at the rate of about fifteen hundred (1,500) tons per month, commencing in January and ending in December, 1884.

Price and terms.—The purchaser is to pay for each delivery of fifteen hundred tons in cash on the twentieth day of the month; succeeding delivery at the rate of thirty-seven dollars and fifty cents ($37.50) per ton of 2,240 lbs.

Exceptions.—Deliveries of steel rails as above are to be subject to any detentions that may occur to the said St. Louis Ore and Steel Company in consequence of storms, fires, strikes, or any other causes beyond its control.

The St. Louis Ore and Steel Company have the right under this contract to substitute other steel rails of equal quality with their

own make for deliveries which it is not convenient for them
203 to make or to purchase steel rails from other mills and deliver under this contract when by so doing they can make it to their advantage in the ore trade resulting in freight being given to purchaser.

Inspection.—The purchaser, if it so desires, may appoint an inspector, who shall have power to inspect at the works or at any time during process of manufacture the rails to be furnished under this contract, with power to reject any that in his judgment are not in accordance with the specifications given by the purchaser, and his decision as to whether they are in accordance with the requirements of said specification shall be final.

Guaranty.—The St. Louis Ore and Steel Company guarantee the said rails to the extent of agreeing to deliver a new rail for each rail that may fail within five years from date of delivery in consequence of defects in its material or manufacture, the rail so replaced to be returned to the St. Louis Ore and Steel Company.

ST. LOUIS ORE AND STEEL COMPANY,

(Signed) By O. L. GARRISON, *Secretary.*

(Accepted.)

THE MISSOURI PACIFIC RAILWAY COMPANY.

(Signed) JAMES HOW, *Assistant Secretary.*

204 *Specifications for Steel Rails, Missouri Pacific Railway.*

First. The rails furnished shall be equal in quality to the best standard rails made in this country, and the chemical analysis of the steel used in the same shall correspond with that in use in the manufacture of said best standard rails.

Second. The name of the company and year of manufacture shall be marked in plain figures and letters on the side of the web of each rail.

Third. The sections of the rails shall correspond with the respective templates issued by the Missouri Pacific Railway Company showing the shape and dimensions of the different rails adopted as their standard.

Fourth. The space between the web of the rails and template representing the splice-bar shall correspond with the templates furnished by the Missouri Pacific Railway Company.

Fifth. The weight of rails shall be kept as near to standard weights as can be demanded after complying with section No. 3.

Sixth. Circular holes one inch in diameter shall be drilled through the web in the center thereof, at such places as shall be specified by the Missouri Pacific Railway Company.

Seventh. The length of rails at 60 degrees Fa-renheit shall be kept within one-quarter of an inch of the standard length, which is thirty feet, with the usual allowance of ten per cent. of shorter lengh*t*s; none to be less than twenty-two feet.

Eighth. The rough edges at the ends of the rails by the saw shall be well trimmed off and filed.

Ninth. All rails are to be straightened in order to insure a perfectly straight track.

Received August 22d, 1884, a copy of the within petition, with due notice that the same will be presented to the Hon. D. J. Brewer, circuit judge, at chambers, in Kansas City, Missouri, on Monday, August 25th, 1884, at 10 o'clock a. m., and further notice thereof is hereby waived by the undersigned.

205 NOBLE & ORRICK,
Att'ys for C. P. Chouteau and Other Intervening Creditors and Stockholders.
R. J. LACKLAND, *Trustee.*
EDMUND T. ALLEN,
Solicitor for Complainant.

206 *Petition of Receiver (B). Filed August 25, 1884.*

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus.
THE ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants.
} Number 2394. In Equity.

Ethan A. Hitchcock, undersigned, receiver heretofore appointed in the above cause, comes and respectfully shows the court—

That in pursuance of the orders made in this behalf on the 12th day of August, A. D. 1884, by which, among other things, the undersigned, as receiver, was directed and authorized to employ counsel in the States of Illinois and Pennsylvania and Missouri who should without delay inquire into the merits of all actions or suits pending in any court in said States, respectively, to which The St. Louis Ore and Steel Company, defendant herein, is or may be a party, on behalf and in the name of said company, under the direction of the undersigned, appear in said suits for the purposes and to the extent in said order mentioned, the undersigned did forthwith make diligent inquiry concerning certain attachment suits which he was informed had been brought in the States of Illinois and Pennsylvania against said defendant company, and employed counsel, as authorized by said order, and now reports concerning the same and his acts under said order as follows:

Suits by attachment were brought in the circuit court of Jackson county, Illinois, by the parties at the dates and for the amounts following against said St. Louis Ore and Steel Company as a
207 non-resident corporation, namely:

WARD & NEAL
vs.
ST. LOUIS ORE & STEEL COMPANY. } No. 1054.

August term, 1884. Demand sued on, $1,926.64.

Affidavit filed, bond given, and summons issued July 21, 1884; returnable August 11. Attachment writ levied by sheriff on stock of goods at Mt. Carson, Jackson county, Illinois, in store and on sundry mules.

E. C. MEACHAM ARMS COMPANY
vs.
SAME DEFENDANT. } No. 1055.

August term, 1884. Demand, $943.

Affidavit and attachment bond filed July 21, 1884. Writ issued same day; returnable August 11. Attachment writ levied July 22, 1884, on mules and stock of goods in store of defendant.

A. G. LEONARD & Co.
vs.
SAME DEFENDANT. } No. 1056.

August term, 1884. Demand, $976.72.

Affidavit and bond filed July 22, 1884. Writ issued same day; returnable August 11. Attachment writ levied July 22 on general stock of goods in building owned by defendant company.

208 JAMES H. MARTIN
vs.
SAME DEFENDANT. } No. 1058.

August term, 1884. Demand, $13,312.12.

Affidavit made by Jesse B. Woodward, agent for plaintiff, and bond given by James H. Martin, Charles P. Chouteau, Daniel R. Garrison, and Oliver F. Garrison, filed July 25, 1884. Writ issued same day, returnable August 11, and levied July 26, 1884, on same stock of general merchandise and other personal property of defendant. This demand (as the undersigned is informed) is on a note given by the St. Louis Ore and Steel Company to the Jupiter iron works for rent of Jupiter furnace, assigned to said Martin for the purposes of suit.

The undersigned is informed, and therefore states, that the stock of goods so levied on by said sheriff in said attachment suits is an assorted stock of goods heretofore kept by it at Mt. Carbon, Illinois, in the immediate neighborhood of the coal mines of said company, to accommodate miners and other employés of said company; that said stock of goods, if sold in ordinary course of dealing at said store, is of the estimated value of about $10,000 or $12,000, but at a

forced sale under attachment there would be no probability of realizing anything like that sum.

The attachment suits were also brought and are pending against said St. Louis Ore and Steel Company at Chicago, in the superior court of Cook county, Illinois, as follows:

IRON MOUNTAIN COMPANY
vs.
ST. LOUIS ORE & STEEL COMPANY. } No. 92695.

August term, 1884. Demand for $19,784.66.

209 Affidavit and bond filed and writ issued July 21st, 1884, under which were summoned as garnishees the North Chicago Rolling Mill Company, R. E. Jenkins, assignee of R. M. Cherrie, and the Merchants' Loan and Trust Company.

JOLIET STEEL COMPANY
vs.
SAME DEFENDANT. } No. 92701.

Same term. Demand for $7,777.07.

Affidavit and bond filed and writ issued July 21, 1884; same parties garnished as above.

JOLIET STEEL COMPANY
vs.
SAME DEFENDANT. } No. 92702.

Same term. Demand, $10,051.78.

Affidavit and bond filed and writ issued July 21, 1884; same parties garnished.

E. C. MEACHAM ARMS COMPANY
vs.
SAME DEFENDANT. } No. 92714.

Same term. Demand for $943.

Affidavit and bond filed and writ issued July 22d, 1884; same parties as above garnished.

In the above cases at Chicago the defendant was returned not found and publication ordered to August term.

The undersigned is informed that R. E. Jenkins, assignee
210 of R. M. Cherrie, has answered the interrogatories addressed to him as garnishee, stating, in substance, that the assignment for benefit of creditors by said Cherrie was made on July 3, 1884, & he is informed that a balance was due by said Cherrie on account of ore shipped by St. Louis Ore and Steel Company, amounting to about the sum of $19,000; that the said ore was delivered to the North Chicago Rolling Mill Company by direction of said Cherrie, and that a question has arisen whether said $19,000 is due from

said Cherrie or from said rolling mill company to the St. Louis Ore and Steel Company. If said amount is due to said steel company from said rolling mill company, then said Cherrie was not indebted to said ore and steel company, all previous indebtedness for ore shipped to him having been settled by negotiable paper delivered to him and disposed of by said ore and steel company, but if said amount is payable by said Chaeeir and said claim should be proved up against said assigned estate, then said amount would be due from said assigned estate to said ore and steel company.

Attachment suits were also brought against said St. Louis Ore and Steel Company, at Pittsburgh, Pennsylvania, in the common pleas court of Alleghany county, as follows:

IRON MOUNTAIN CO. OF ST. LOUIS, MO.,
vs.
ST. LOUIS ORE AND STEEL CO. } No. 77.

October term, 1884; returnable first Monday of August. Demand sued on, $19,656.

Affidavit and bond filed and writ issued July 21, 1884. Carnegie Bros. & Co., Limited, summoned as garnishees of defendant July 23rd, 1884.

W. H. BROWN'S SONS
vs.
SAME DEFENDANT. } No. 492.

211 September term, 1884; returnable first Monday of September. Demand, $5,035.87.

Affidavit and bond filed and writ issued July 25, 1884. Same garnishee summoned as above.

From the best information obtained in the absence of complete returns of ore shipped to Messrs. Carnegie Bros., the undersigned supposes that for ore delivered prior to July 21 the balance due from Carnegie Bros. & Co., Limited, to said ore and steel company will not exceed $16,000. Under their contract of February, 1884, for 50,000 tons ore (mentioned in separate petition filed by the undersigned), payments for ore delivered are due from Messrs. Carnegie on the 20th of the month succeeding month of delivery, and they have a right to pay in four months' paper. All ore delivered to them to and including the month of June, 1884, was settled for before July 21. The amount estimated to be due from them for July deliveries made up to and including July 13 is about $10,000. For August deliveries made since July 13 (and the freight on part of which was paid by the receiver, as stated in separate petition above mentioned) a further amount of about $10,000 will be due from them to be settled for in September under said contract.

The undersigned is also advised of two attachment suits brought against said ore and steel company in the court of common pleas of Mercer county, Pennsylvania, about the 21st or 22rd of July, as follows:

By James M. Schoomaker for $3,500.

By the St. Louis, Salem & Little Rock railroad for $3,000.

In aid of which suits Messrs. Pierce, Kelly & Co., of Sharpsville, Mercer county, Pennsylvania, were summoned as garnishees.

The undersigned has written for information concerning these suits, but has not yet received details thereof.

212 The undersigned is not advised of any other pending attachment suits in other States than Missouri against said St. Louis Ore and Steel Company.

In pursuance to the order of this court made on August 12 the undersigned has employed counsel, who have examined into and advised him concerning said several suits.

In said attachment suits pending in Pennsylvania he is advised that no judgment can be rendered for some months to come and no appearance has been entered as yet in said suits for said company.

In said suits pending in Jackson county, Illinois, brought by Ward & Neal, A. G. Leonard & Co., and James H. Martin, respectively, a plea to the general issue has been filed on behalf of said company to the end that judgment may not be recovered except upon proper proof of the demand sued for. In the suit brought by the Meacham Arms Company a plea in abatement has been filed for said defendant on the ground of the pendency of a suit by the same plaintiff for the same demand in the superior court of Cook county, Illinois. In the suits pending at Chicago, as above stated, brought by the Iron Mountain Company and the Joliet Steel Company, respectively, pleas to the general issue have been filed for said defendant and application has been made by said defendant for the removal of said two suits brought by the Joliet Steel Company, an Illinois corporation, to the United States circuit court for the northern district of Illinois. In the suit pending at Chicago by E. C. Meacham Arms Company, in which the defendant was not served nor publication ordered, no appearance has been entered for defendant as yet.

The undersigned prays that the action thus far taken by him under said order of August 12 in respect of said suits may be approved.

213 Before the attachment suits in Jackson county, Illinois, above mentioned, the undersigned is informed that two suits were brought by attachment before justice of the peace; one

By W. R. Rice & Co., St. Louis, for $91.65; the other

By Henry Heil, of St. Louis, for $101.80.

Under which mules and other property of said defendant company were levied on, and that on the 21st of August, under a judgment recovered by said Heil & Co. for $144, two mules attached in said suits were sold for $226.

In said attachment suits in Jackson county, Illinois, property of considerable amount and value has been levied on and is in the possession of the sheriff, including a general stock of goods at the defendant company's store at Mt. Carbon, in estimated value $10,000 or $12,000; also a number of mules and other articles of personal

property of considerable value. The undersigned submits to the court whether authority should be given to him to make an agreement with said attaching creditors, if found practicable, by which said property might be released from attachment and delivered to said receiver at a valuation subject to a prior claim upon the proceeds thereof in his hands in favor of said creditors to such amounts, if any, as may be adjudged due them respectively in said suits.

If such an arrangement could be made upon terms just to all parties needless costs and expenses growing out of said attachments could be avoided.

The undersigned further shows the court that on the 28th of July, 1884, Robert M. Olyphant, complainant herein, filed in the circuit court of the United States for the southern district of Illinois an ancillary bill of complaint in substance corresponding to the
214 bill filed in this cause, together with a copy of the order of this court made in this cause on July 21, 1884, and of the bond given by the undersigned as provisional receiver herein, and upon motion of said complainant an ancillary order was made by said circuit court of the United States for the southern district of Illinois, adopting as the order of that court the said order made by this court on July 21, 1884, except as to the requirement of a bond therein mentioned, and appointing the undersigned receiver in said cause within the jurisdiction of said circuit court for the southern district of Illinois, and directing him to take possession of all and singular the rights and property and franchises of the said defendant corporation within the State of Illinois, the undersigned accepting said appointment as receiver in the State of Illinois under said ancillary order in aid of the order made by this court, and submits to the court whether any and what instructions should be given to him in respect of his action as such receiver within the State of Illinois, and of report to be made in that behalf by him in said circuit court of the United States for said southern district of Illinois, and for such other orders and instructions in that behalf as to the court shall seem meet.

The undersigned further shows to the court that other ancillary suits have also been brought by said complainant Olyphant upon bills of complaint substantially corresponding to the bills filed herein, to wit, in the circuit court of the United States for the western district of Pennsylvania and the circuit court of the United States for the eastern district of Pennsylvania, respectively, since the institution of this suit; that in and by each of said courts an ancillary order has been made, on motion of said complainant, whereby the undersigned has been appointed receiver of said St. Louis Ore and Steel Company within the jurisdiction of said
215 courts respectively, being required to give bond as such in twenty thousand dollars in the circuit court for said western district and in thirty thousand dollars in the circuit court for said eastern district; but the undersigned has not as yet taken any action under said appointments or either of them.

The undersigned further shows to the court that, pursuant to its order on the 7th day of August instant, he has employed such

agents as he found to be necessary for the discharge of the duties committed to him. Among others he has employed the following, namely: Oliver L. Garrison, hitherto secretary and treasurer of the St. Louis Ore and Steel Company; Emile L. Goltstein, hitherto superintendent of the Vulcan steel works; Jamas B. Gazzam, hitherto chief clerk and paymaster at said works; James Simpson, hitherto manager of the Pilot Knob and Grand Tower departments of said company, and J. D. Peters, hitherto chief clerk at Grand Tower and Mt. Carbon, Jackson county, Illinois.

The extent, character, and value of the property of said company in the charge of the undersigned is such that he is of opinion that the services of these persons are necessary; but he has not made any definite agreement with them as to compensation. The undersigned prays that it be referred to the master, without delay, to inquire into and report upon a proper compensation for said persons respectively, in view of the special duties required of them, and that such report be filed, and that, unless excepted to within five days thereafter, the same stand as the order of the court.

The undersigned prays that the said order made in this cause on August 7, 1884, requiring him to file a report of his doings as receiver on the 10th day of each calendar month, be modified, except as to his report covering the period of his provisional receivership, so as to fix the 25th day of each calendar month as the date
216 of filing said monthly reports, for the reason that it is not practicable for him to have his accounts made up, checked and verified, and ready for filing at an earlier date of the month.

For E. A. HITCHCOCK, *Receiver*,
HITCHCOCK, MADILL & FINKELNBURG,
Solicitors.

Receiver at St. Louis August 22rd, 1884, a copy of the within petition, with due notice that the same will be presented to the Hon. D. J. Brewer, circuit judge, at chambers, in Kansas City, Missouri, on Monday, August 25th, 1884, at 10 o'clock a. m., and further notice thereof is hereby waived by the undersigned.

NOBLE AND ORRICK,
Att'ys for C. P. Chouteau and Other Intervening Creditors and Stockholders.
R. J. LACKLAND, *Trustee.*
EDMUND T. ALLEN,
Solicitor for Complainant.

217 *Petition of Receiver. Filed August* 25, 1884.

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants. } Number 2394. In Equity.

Ethan A. Hitchcock, heretofore appointed receiver of The St. Louis

Ore and Steel Company and The Grand Tower and Carbondale Railroad Company, defendants in the above-entitled cause, comes and shows to the court that, in obedience to the orders made by said court in this cause, to wit, on the 21st day of July and the 7th day of August, A. D. 1884, respectively, he took charge and possession, on July 22d, 1884, of the Grand Tower and Carbondale railroad, in Jackson county, Illinois, and has since, by his agents and employés in that behalf, *separated* said railroad and is now operating the same.

Said railroad is about twenty-six miles in length, from Grand Tower, on the Mississippi river, about —— miles below St. Louis, to Carbondale, on the main line of the Illinois Central railroad, making railroad connection between said truck line of railroad and the Mississippi river, which has been in operation for many years past. Under a mail contract with the United States Post Office Department daily mails are carried over said railroad between said points, said road being also an outlet for the products of the coal mines at and near the village of Mount Carbon, known as Big Muddy coal, of a superior quality and in demand as well for steamboats on the
218 Mississippi river as for manufacturing and household purposes in Illinois and Missouri.

Hereto is annexed a statement marked Exhibit "A," which the undersigned has caused to be prepared and believes to be correct, showing the receipts and expenses of operating said railroad for the month ending August 15th, 1884, from which it appears that the total earnings of said railroad for said period were $1,402.66 and the actual expenses of operating it during said period were $1,025.20, although from about July 25th the shipment of coal from the mines at or near Mount Carbon had practically ceased.

The undersigned respectfully states that if the mining of coal on the property of the St. Louis Ore and Steel Company in Jackson county, Illinois, were resumed at not exceeding two cents per bushel for mining he believes that from now until navigation is closed or impeded by ice in the river there would be a demand for said coal for steamboats and for manufacturing purposes in quantity and at prices which would yield a profit, and thereby lessen the expense of caring for and protecting the property. The undersigned prays for such further instructions and authority in the premises as to the court shall seem for the best interests of all concerned, the undersigned being of opinion that the operation of said railroad should be continued, and that coal-mining operation should be resumed on said property, provided it can be done at the cost above mentioned.

For E. A. HITCHCOCK, *Receiver*,
HITCHCOCK, MADILL & FINKELNBURG,
Solicitor.

219 EXHIBIT "A."

Statement Showing Monthly Operating Expenses of Grand Tower and Carbondale Railroad under the Present Arrangement.

Conducting transportation		$350 00
1 Conductor	$75 00	
1 brakeman	55 00	
3 station agents	160 00	
Rent, station facilities, Carbondale	50 00	
Supplies, &c., for train (estimate)	10 00	
Motive power		280 00
1 engineer	83 20	
1 fireman	52 00	
1 wiper	45 00	
Fuel and repairs to engine (estimated)	100 00	
Maintenance way		345 00
2 foremen	105 00	
8 sectionmen	240 00	
Maintenance cars (estimated)		50 00
Total		$1,025 20

Earnings for month ending August 15, 1884:

From passengers	$881 25	
" freight	411 96	
" telegraph	15 00	
" P. O. Dep't for mail service	90 20	
" express	4 25	
		$1,402 66

220 The company receives 1,082.44 per year for carrying the mails.

The Adams Express Company does the express business and pays tariff rates on first-class goods.

Received — St. Louis August 22rd, 1884, a copy of the within petition, with due notice that the same will be presented to the Hon. D. J. Brewer, circuit judge, at chambers, in Kansas City, Missouri, on Monday, August 25th, 1884, at 10 o'clock a. m., and further notice thereof is hereby waived by the undersigned.

NOBLE AND ORRICK,
Attorneys for C. P. Choutneau and Others, Intervening Creditors and Stockholders.
R. J. LACKLAND, *Trustee.*
EDMUND T. ALLEN,
Solicitor for Complainant.

221 In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants. } Number 2394. In Equity.

In chambers, before the Honorable David J. Brewer, circuit judge.

MONDAY, *August 25th*, 1884.

Now comes Ethan A. Hitchcock, heretofore appointed and qualified as receiver of said corporations, defendant in this behalf, and presents to the court his petitions, marked respectively "A," "B," and "C," reporting certain acts and proceedings by him as such receiver and praying for further instructions, as therein set forth.

And it appearing that due notice of the said application was given to said complainant and to the several defendants served with process in this cause, and also to Messrs. Noble & Orrick, solicitors for Charles P. Chouteau and others acting with him and intervening for their interest as creditors and stockholders of The St. Louis Ore and Steel Company, defendant, and upon reading and filing said petitions and after hearing counsel in respect of the same, to wit, Henry Hitchcock, Esq., of counsel for said receiver, and John C. Orrick, Esq., of counsel for said Charles P. Chouteau and others, intervenors, it is thereupon ordered, adjudged, and decreed—

1. That the acts and proceedings of said receiver under the orders heretofore made in this behalf, as by said receiver reported and set forth in said petitions respectively, be, and the same are hereby, approved and said receiver is directed to proceed with the
222 execution of said orders, except as hereinafter modified or otherwise directed.

2. It is further ordered, adjudged, and decreed—

That all just demands for labor and services heretofore rendered to said corporations defendant respectively which remain unpaid shall be paid by said receiver in full as soon as practicable out of any and the first moneys coming into the hands of said receiver as such, after first therefrom paying or providing for payment of the reasonable and necessary current expenses of said receivership and for the release and delivery of ore heretofore shipped by said St. Louis Ore and Steel Company and held for freight, if any, and for interest on collateral notes authorized to be paid by the order made in this behalf on the 12th day of August instant, with directions and authority to said receiver to adjust and ascertain, according to his best judgment, by reference to the books and accounts and pay-rolls of said company defendant, and other proof thereof to be presented to him, the sums justly due and remaining unpaid upon all claims for labor and services such as above authorized to be paid, and to pay the same in full respectively upon his being satisfied that said demands are justly due. All other demands against said corporations defendant respectively to be presented by way of intervening petition, as hereinafter provided for, and said receiver for that pur-

pose to return to the persons respectively presenting the same all claims purporting to be for labor or services concerning which he shall not be satisfied that the sums claimed are justly due, and that such claims are entitled to priority in payment under the provisions of this order.

3. It is further ordered, adjudged, and decreed—

That all persons holding claims against said corporations defendant or either of them have leave to present the same
223 by way of intervening petition in this cause, all such petitions on being filed with the clerk and a deposit made or security given in the sum of fifteen dollars against costs in respect thereof to stand referred without further order to B. Gratz Brown, Esq., appointed special master in this behalf, for inquiry and report thereon, and that the said master do, without delay, inquire into and report upon all claims so referred to him and what sums, if any, are justly due thereon; also in what order the same ought to be paid under the orders made in this cause and according to the principles and rules of equity, with leave to said master to hear the parties and take proof at such times and places wit-in the eastern district of Missouri as may be convenient, upon ten (10) days' notice of the time and place of hearing, the several classes of demands so referred to him to be given to all parties interested, by advertisement in two daily newspapers published in the city of St. Louis, Missouri, and one copy of such advertisement to be sent by mail one week prior to to the day named therein to the solicitors respectively representing the claims therein mentioned.

4. It is further order-, adjudged, and decreed—

That the sale of six hundred tons of pig-iron made and reported by said receiver be, and the same is, approved; and said receiver is authorized and directed from time to time, and as soon as practicable without sacrificing the same, to sell or cause to be sold, in the customary manner of selling such property in St. Louis, the iron ore, pig-iron, steel rails, ingots, blooms, spiegel, ferro-manganese, and steel and iron scrap on hand, as reported by him, at current prices, for cash or on usual credit with good security, according to his best judgment and information; and said receiver is au-
224 thorized to sell in the ordinary course of trade, at the cash value thereof, any goods, merchandise, and supplies in his charge or possession as such receiver, or to apply the same or any part thereof towards payment of any claims against said corporations defendant herein or hereafter ordered or authorized to be paid, and so much of the order made in this cause on the 12th day of August instant as authorized the sale, subject to the approval of this court, of the property pledged to secure certain collateral notes therein mentioned is hereby modified so that said receiver is authorized to sell or cause to be sold said property in the customary manner of selling such property in St. Louis, at current prices, for cash or on credit with good security, according to his best judgment and information, the proceeds of such sales to be applied to payment of said collateral notes respectively.

5. It is further ordered, adjudged, and decreed—

That the order made in this behalf on the 7th day of August instant, so far as relates to the monthly reports to be filed by said receiver on the tenth day of each month, be, and the same is hereby, so modified that the said reports shall be filed on the twenty-fifth day of each calendar month, beginning with the month of September next, for and in respect of the receipts and payments and transactions of said receiver during the calendar month next preceding, but the report therein required to be filed for the period covered by the provisional receivership, to wit, from the 21st day of July to and including the 7th day of August instant, shall be filed on the 10th day of September, A. D. 1884.

6. It is further ordered, adjudged, and decreed—

That it be referred to the master without delay to inquire into and report upon a proper compensation, to be paid by said
225 receiver as part of the current expenses of said receivership, for the services rendered and to be rendered to said receiver by the following persons, to wit, Oliver L. Garrison, Emile L. Goldstein, James B. Gazam, James C. Simpson, and J. D. Peters, reference being had to the extent, character, and value of the property in charge of said receiver and the nature of the services rendered and to be rendered by said persons respectively, the hearing before said master in respect thereof to be upon five days' notice to the several persons interested and to the parties to the cause and the master to report with all diligence, with leave to any party intere-ted therein to except to such report or part thereof, and such report, unless excepted to within five days after the filing thereof, to stand as the order of the court.

7. It is further ordered, adjudged, and decreed—

Reference being had to the appointment of the said Ethan A. Hitchcock as receiver in ancillary suits brought by the complainant herein in the States of Illinois and Pennsylvania, as in said petitions mentioned, that said receiver from time to time report to this court his proceedings under any orders given or to be given to him by any court or courts in any other State or district touching any property of said corporation, defendant herein, or either of them, within the jurisdiction of said courts respectively.

8. It is further ordered, adjudged, and decreed—

That said receiver be, and he is hereby, authorized to provide for the payment of claims for labor and services hereinbefore mentioned and ordered to be paid, as well *as* such claims accrued in the State of Illinois as in the State of Missouri, by borrowing not to exceed the sum of ($25,000) twenty-five thousand dollars in all upon
226 certificates of indebtedness to be issued by him as receiver to the persons loaning or advancing said sums, such certificates to bear interest at a rate not to exceed eight per centum per annum, payable semi-annually, and the principal to be payable at or at any time before twelve months after date, upon thirty days' notice given by said receiver, with interest accrued, said certificates to be a first lien upon and payable out of the proceeds of any property and income of St. Louis Ore and Steel Company in the charge and possession of said receiver and to be by him as soon as practicable re-

deemed out of the proceeds of sales of unpledged personal property hereinbefore ordered to be sold, after providing thereout for current expenses of the receivership and to release ore held for freight, if any, and for interest on collateral notes above mentioned.

9. It is further ordered, adjudged, and decreed—

That said receiver have leave to apply to the circuit court of the United States for the southern district of Illinois for directions touching the further operation by him, as receiver, of the Grand Tower and Carbondale railroad, and for directions as to mining coal on the lands of the St. Louis Ore and Steel Company in Jackson county, Illinois, provided, in his judgment, coal can be there mined at a cost not to exceed sixty-two and one-half cents per ton and sold at a profit, and, in aid of such mining operations, if undertaken by him, is authorized to guarantee to third persons payment for supplies furnished by them to miners and employés to the extent of the wages earned by said miners and employés and retained by him against said advances.

10. It is further ordered, adjudged, and decreed—

That said receiver be, and he is hereby, authorized to re-
227 sume operations in mining ore on the lands of said St. Louis Ore and Steel Company in the State of Missouri, provided, in his best judgment, the same can be done at a profit, and to carry on such mining operations to such extent as necessary to preserve and fulfill existing contracts for iron ore mentioned in said petitions filed by said receiver and to fill orders received from other persons for ore, and, for that purpose, to purchase from time to time such goods and supplies, for cash, as he may find actually necessary to keep on hand, if any, for the use of persons employed in such operations, or to guarantee to third persons payment for supplies furnished by them to miners and others employed by said receiver to the extent of wages earned by them and retained by him against such guaranty.

And the said receiver is authorized and directed, so for as practicable under and in conformity with the foregoing directions, to preserve and fulfill the ore contracts made by and with said St. Louis Ore and Steel Company mentioned in said petitions filed by him, and to sell and deliver ore mined in pursuance of the authority above given, and to make and execute such contracts for labor, freight, and supplies as necessary from time to time therefor.

11. It is further ordered—

That said receiver cause to be printed, for the use and information of the court and of the parties interested, not to exceed fifty copies of the pleadings, exhibits, and orders made from time to time in this cause.

DAVID J. BREWER,
Circuit Judge.

228 In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
versus
THE ST. LOUIS ORE AND STEEL COMPANY and Others, Defendants.
} Number 2394. In Equity.

TUESDAY, *August 26th*, 1884.

In chambers, before the Honorable David J. Brewer, circuit judge.

On further considering the petition (marked "A") presented and filed by Ethan A. Hitchcock, receiver, in this cause, on the twenty-fifth day of August instant, and the prayer of said receiver for further instructions touching his duties in respect of the contracts for the sale and purchase of steel rails in said petition mentioned, and it appearing under the contracts of said St. Louis Ore and Steel Company with the Missouri Pacific Railway Company, of date November 6th, 1883, therein mentioned, said railway company ordered of said receiver (2,045) two thousand and forty-five tons of steel rails for August delivery, and that said orders were transmitted by said receiver, to wit, as to (1,500) fifteen hundred tons thereof, to the North Chicago Rolling Mill Company, and as to (545) five hundred and forty-five tons thereof, to the Joliet Steel Company, for execution by said last-named companies respectively under their contracts with said St. Louis Ore and Steel Company, of date respectively the first day of December, 1883, and the 16th day of January, 1884, in said petition mentioned, and that said companies last named have notified said receiver of their readiness to
229 fulfill said orders in accordance with the terms of their said contracts—

It is further ordered, adjudged, and decreed that said action by said receiver is approved, and said receiver is authorized, for the purpose of providing the means of payment for said (2,045) two thousand and forty-five tons of rails so ordered of him by said Missouri Pacific railway, to borrow in all a sum not to exceed ($75,000) seventy-five thousand dollars by issuing his certificates of indebtedness as such receiver, payable at twelve months from date thereof or sooner upon thirty days' notice thereof by the receiver, with interest from date at not to exceed eight per centum per annum, such certificates to be a first lien upon and payable out of the proceeds of any property in the charge or possession of said receiver, and all sums received or collected by said receiver as the proceeds of said rails or any part thereof to be applied by him without delay to the redemption of the certificates issued under this order, and such certificates or the moneys obtained from the same to be used and applied by said receiver in payment for rails furnished in pursuance of said orders transmitted to them respectively and in accordance with the terms of their said respective contracts by said North Chicago Rolling Mill Company and said Joliet Steel Company respectively, and that all rails so received by said receiver

from said North Chicago Rolling Mill Company and said Joliet Steel Company respectively in pursuance of their said contracts be by said receiver tendered to said Missouri Pacific Railway Company under and on account of said contract with the St. Louis Ore and Steel Company, and that said receiver report to the court all things done by him under this order.

230 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of the pleadings and orders to this date, to wit, September 18th, 1884, in case No. 2394, of Robert M. Olyphant, plaintiff, against The St. Louis Ore and Steel Company *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and
[SEAL.] affix the seal of said court, at office, in the city of St. Louis, in said district, this 18th day of September, in the year of our Lord eighteen hundred and eighty-four.

A. P. SELBY,
Clerk of said Court.

(Endorsed:) Filed Sept. 29, 1884. Wm. H. Bradley, clerk.

231 On the same day, to wit, on the twenty-ninth day of September, in the July term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs. } In Chancery.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.*

Now, on this twenty-ninth day *day* of September, A. D. 1884, comes the said complainant, by his solicitors, and files his ancillary bill of complaint, together with a copy of his original bill and copies of the several orders of the circuit court of the United States for the eastern district of Missouri, wherein said original bill was filed, and it is now, in consideration of the premises, ordered that the several orders heretofore mentioned of said circuit court of the United States for the eastern district of Missouri be approved and be taken and held to be the orders of this court, except as to the requirement of a bond therein mentioned, and as to the matter of said bond this court reserves to itself the power hereafter to require, in its discretion, a bond from the receiver named in said orders; and it is further
ordered that said receiver, to wit, Ethan A. Hitchcock, do
232 proceed to take possession of all and singular the rights and property of said St. Louis Ore and Steel Company within the

State of Illinois and the jurisdiction of this court, with all the power and authority as to the same granted him by said circuit court of the eastern district of Missouri as to and regarding the property, rights, and franchises of said corporations existing within the jurisdiction of that court.

233 Afterward, to wit, on the ninth day of October, 1884, came Ethan A. Hitchcock and filed in said clerk's office his acceptance of the appointment as receiver in said entitled cause; which said acceptance is in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery. Bill.

Now comes Ethan A. Hitchcock, who was by the order of this court entered herein on the 29th day of September, A. D. 1884, appointed receiver of all the property, rights, credits, and effects of the said defendant, The St. Louis Ore & Steel Company, and accepts the said appointment.

E. A. HITCHCOCK, *Receiver.*

(Endorsed:) Filed Oct. 9, 1884. Wm. H. Bradley, clerk.

234 On the same day, to wit, on the ninth day of October, 1884, came Ethan A. Hitchcock, receiver, by his solicitors, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.* }

We hereby enter our appearance for Ethan A. Hitchcock, the receiver appointed in the above-entitled cause.

HUTCHINSON & LUFF.

Oct. 8th, 1884.

(Endorsed:) Filed Oct. 9, 1884. Wm. H. Bradley, clerk.

Afterward, to wit, on the third day of November, 1884, came Solon Humphreys and Thomas E. Tutt, receivers, and filed in said clerk's office their petition in said entitled cause; which said petition is in the words and figures following, to wit:

235 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois.

In the matter of The St. Louis Ore & Steel Company, Ethan A. Hitchcock, receiver.

OLIPHANT
vs.
ST. LOUIS ORE & STEEL CO. } In Equity.

Your petitioners, Solon Humphreys & Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, respectfully show unto this honorable court that on or about the 1st day of July, A. D. 1884, under a contract of purchase on short credit by one Robert M. Cherrie from the said ore & steel company of a large quantity of iron ore, the said Cherrie and the said ore & steel company employed your petitioners, as common carriers, to transport 146 car-loads of such ore from the city of St. Louis, Missouri, to the mills of the North Chicago Rolling Mill Company, located at South Chicago, Cook county, Illinois, there to be delivered to such rolling mill company on a purchase thereof by it from the said Cherrie on the payment of the customary freight for such transportation.

And your petitioners further show that on the 3d day of July, A. D. 1884, the said Cherrie became insolvent and made a general assignment to one Robert E. Jenkins, who is now engaged in settling the estate of said Cherrie under the order of the county court of Cook county aforesaid; and they also show upon their information and belief that the said ore & steel company, having learned of the insolvency of said Cherrie, and the said 146 car-loads of ore being still in transit on the railway operated by them between the
236 said city of St. Louis and the said South Chicago, determined to exercise its rights to stop said ores *in transitu*, and to that end and on the day last aforesaid telegraphed the managing officer of said rolling mill company in substance to take possession of said 146 car-loads as fast as they arrived at said South Chicago and to prevent their falling into the hands of said Cherrie or his said assignee; and, in obedience to said telegraphic order, the said rolling mill company did afterward, as they arrived at said South Chicago, take into its possession all of the said 146 car-loads of ore of a value exceeding $100 per car, but subject to the lawful freight charges of your petitioners thereon, and which amounted in the aggregate to the sum of twenty-nine hundred dollars and seventy-two cents ($2,900.72), and attached to this petition is a schedule marked "A," which shows the numbers of such cars, the freight due on each, and the date of its shipment prior to delivery to said rolling mill company at said South Chicago.

And your petitioners show that in making such delivery of said 146 car-loads of ore to said rolling mill company for the accommodation of the parties interested therein they did not intend to waive their lien thereon or its proceeds for such freight, but, on the contrary, your petitioners understood that the said rolling mill company took said ores subject to the said freight due thereon, and that out of the purchase price therefor your petitioners should first be paid the said freight to the am't of $2,900.72, and the balance of the purchase price should then be paid over to the *the* said ore & steel company, and it was only upon such understanding that your petitioners were induced to surrender the actual possession of such ores to the said rolling mill company.

237 And your petitioners further show upon information and belief that the said rolling mill company has appropriated the whole of the said 146 car-loads of ore to its own use and has never paid any consideration therefor to any one, but claims that it cannot safely make such payment until some court of competent jurisdiction shall have decided who is entitled to such payment, and the said sum of $2,900.72 remains due and wholly unpaid to your petitioners.

And your petitioners further show that since the said 146 car-loads of ore came into the possession of said rolling mill company as aforesaid the Iron Mountain Company and the Joliet Steel Company have commenced in the superior court of Cook county, Illinois, certain suits by attachment against said ore & steel company and in such suits have summoned the said rolling mill company as garnishees, and the said suits are now pending in said superior court.

They therefore pray that this honorable court will ascertain and determine to whom the said rolling mill company shall make payment for the said 146 car-loads of ore—whether to the assignee of the said Cherrie or the receiver of the said ore & steel company—and that out of the purchase price for said ore to be paid by said rolling mill company there be deducted and paid to your petitioners the said freight money, amounting to $2,900.72, as aforesaid, and that the said rolling mill company and the said ore & steel company and its said receiver and the said Cherrie and his said assignee and the said Iron Mountain Company and the said Joliet Steel

238 Company may be ruled to show cause by some short day why the prayer of this petition should not be granted, and that your petitioners may have such other or further relief in the premises as shall be just and equitable.

And your petitioners, &c.

SOLON HUMPHREYS,
THOMAS E. TUTT,
Receivers of the Wabash, St. Louis & Pacific Railway Company,
By SLEEPER & WHITON,
Their Solicitors.

WM. H. LEE, *Of Counsel.*

STATE OF ILLINOIS, } ss:
County of Cook, }

C. L. Wellington, being first duly sworn, says that he is assistant general freight agent of the petitioners in the foregoing petition; that he has read the said petition and knows the contents of the same, and that the same is true of his own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters that he believes it to be true.

CHARLES L. WELLINGTON.

Subscribed and sworn to before me this 29th day of October, 1884.

WILLIAM H. LEE,
Notary Public.

[SEAL.]

239 *Freight Charged on Ore Delivered to North Chicago Rolling Mill Company After July 3d, 1884, as Claimed by the Wabash.*

Date.	W. B.	Car.		Am't.
July 5	191	2809	Ore	15 87
"	203	6929	"	16 00
"	207	13060	"	21 27
"	209	11461	"	16 61
"	197	2781	"	20 77
"	199	3487	"	22 20
"	198	921	"	24 71
9	282	10659	"	18 12
"	275	10380	"	19 56
8	270	4084	"	18 22
"	269	5432	"	18 76
"	267	22017	"	22 97
"	266	21390	"	15 34
"	265	22283	"	25 55
"	263	2715	"	22 70
"	261	129	"	25 59
"	250	11480	"	21 16
"	249	12938	"	17 75
"	264	19185	"	14 33
"	246	9704	"	24 91
"	262	4751	"	27 21
"	268	8786	"	23 07
5	201	12251	"	17 28
"	202	6972	"	17 42
"	204	29396	"	18 02
"	205	929	"	19 83

Freight Charged on Ore Delivered, etc.—Continued.

Date.	W. B.	Car.		Am't.
July 5	206	11974	Ore	15 07
"	208	11111	"	20 09
"	210	10547	"	16 61
"	187	8052	"	17 21
"	188	3856	"	22 51
"	189	2731	"	20 77
"	190	579	"	16 74
"	192	9608	"	24 12
"	193	3882	"	22 30
8	200	12813	"	18 49
"	255	1539	"	22 43
9	288	9847	"	17 95
"	277	527	"	22 84
"	274	9989	"	17 21
"	276	4698	"	19 29
8	247	4522	"	26 41
9	284	2423	"	16 34
"	278	973	"	26 04
5	196	9760	"	24 21
"	194	1065	"	15 47
"	175	23569	"	16 94
8	254	10752	"	23 00
"	252	12156	"	16 47
"	245	3481	"	23 11
"	248	9687	"	23 89
"	253	12614	"	20 80
"	243	6017	"	19 02
"	244	9242	"	22 40
5	195	19325	"	15 27
55 cars				1,108 22
June 24	799	12895	"	26 11

This bill was paid by N. C. R. M. Co.

240 *Freight on Ore Cars Delivered to North Chicago After July 3, '84, on which Wabash Claim Freight as Below.*

Date.	W. B.	Car.		Am't.
July 3	196	11051	Ore	23 55
"	127	10228	"	23 18
"	125	1038	"	17 88
4	124	10988	"	24 52
3	123	9853	"	14 46
"	122	1277	"	15 00
"	128	6193	"	15 60
1	6	12415	"	16 80
"	5	6938	"	21 17
"	1	7290	"	15 54
"	3	2654	"	17 00
"	1	22088	"	26 36
"	2	903	"	14 10
"	20	443	"	16 18
"	70	10050	"	23 25
"	47	6066	"	15 20
"	45	22292	"	24 82
2	71	12276	"	21 64
"	85	29510	"	17 86
"	86	23146	"	12 59
"	87	8305	"	14 80
"	90	1133	"	24 99
3	109	745	"	14 40
"	110	147	"	17 42
"	111	9872	"	24 62
"	112	12533	"	19 43
"	113	10415	"	16 68
"	114	11894	"	17 95
"	115	10876	"	18 35
"	108	23195	"	21 79
"	116	11266	"	18 15
2	69	10847	"	21 77
"	72	10546	"	23 98
"	73	11620	"	19 56
"	74	12389	"	15 94
"	75	13008	"	20 63
"	76	6788	"	21 50
"	63	726	"	16 88
4	64	5790	"	18 22
1	15	12235	"	16 95
"	14	12139	"	19 19
"	13	6835	"	20 46
2	66	11935	"	16 58

Freight on Ore Cars Delivered, etc.—Continued.

Date.	W. B.	Car.		Am't.
July 2	68	10247	Ore	21 00
1	16	8007	"	16 21
"	48	10015	"	23 59
"	44	9856	"	22 78
"	43	9964	"	24 95
2	77	7195	"	22 17
1	12	9369	"	22 64
2	65	11216	"	21 66
1	46	3305	"	24 78
2	67	10713	"	17 21
1	11	1397	"	20 84
"	10	6716	"	20 13
"	8	1486	"	14 86
"	17	702	"	17 74
"	9	7518	"	19 16
"	7	12055	"	16 77
June 28	1129	5677	"	25 76
30	1147	511	"	20 09
July 3	156	897	"	21 79
62 cars				1,211 07
62 cars				1,211 07
July 5	174	23000	"	17 75
"	176	2335	"	19 55
"	177	2388	"	15 60
3	165	9258	"	24 76
"	164	9729	"	18 82
"	163	1029	"	24 85
"	162	4324	"	14 74
"	161	23345	"	22 84
"	160	5117	"	17 68
"	159	24242	"	14 39
"	158	23524	"	16 74
"	157	25294	"	20 00
"	154	4935	"	19 82
"	140	10251	"	20 23
"	139	6980	"	15 47
"	138	11989	"	17 35
"	137	12108	"	19 09
"	136	2844	"	15 74
"	135	10397	"	15 54
"	133	9990	"	24 92
"	131	9573	"	23 31
"	130	9604	"	22 71

Freight on Ore Cars Delivered, etc.—Continued.

Date.	W. B.	Car.		Am't.
July 3	129	3512	Ore	22 33
"	132	10056	"	23 48
"	155	9834	"	25 17
2	84	29478	"	22 53
3	166	9870	"	24 52
5	173	29005	"	15 39
90 cars				1,766 39

(Endorsed :) Filed Nov. 3d, 1884. Wm. H. Bradley, clerk.

241 On the same day, to wit, on the third day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On reading and filing the petition of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash and Pacific Railway Company, this day presented in this cause, and on motion of the solicitors of said receivers, it is ordered that the North Chicago Rolling Mill Company, the St. Louis Ore and Steel Company, and Ethen A. Hitchcock, its receiver, and Robert M. Cherrie and Robert E. Jenkins, his assignee; the Iron Mountain Company, and the Joliet Steel Company do show cause on the opening of this court on Monday morning, the tenth day of November instant, why the prayer of said petition should not be granted.

It is further ordered that a copy of this order be served on each of such parties or his or its attorneys or solicitors within three days from this date.

242 Afterward, to wit, on the tenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and on motion of the defendant The Chicago Rolling Mill Company, by its solicitor, the time for it to answer herein is hereby extended to Monday next.

243 Afterward, to wit, on the seventeenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of Solon Humphreys for all parties in interest to show cause why his intervening petition should not be allowed, and, after hearing the arguments of counsel, the court takes the same under advisement.

On the same day, to wit, on the seventeenth day of November, 1884, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its answer to the petition of the Wabash, St. Louis and Pacific railway in said entitled cause; which said answer is in the words and figures following, to wit:

244 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Thereof, October Term, A. D. 1884.

OLIPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

In the matter of the petition of the Wabash, St. Louis & Pacific Railway Company.

The Answer of the North Chicago Rolling Mill Company to the Petition of the said Railway Company.

This respondent, answering, says that it is informed and believes and therefore admits it to be true that the said railway company was employed to carry the said 146 car-loads of iron ore from St. Louis, Missouri, to the mills of this respondent at South Chicago, in the State of Illinois, to be there delivered to this respondent pursu-

ant to a contract theretofore made between this respondent and said Cherrie; but this respondent has no knowledge or information as to the terms of the employment of the said railway company nor by whom it was employed to transport said 146 cars. This respondent avers that under its contract with said Cherrie for the purchase of said iron this respondent was and is entitled to have said iron ore delivered to it at its said mills free of charge.

This respondent, further answering, admits that on the 3d day of July, 1884, the said Cherrie became insolvent and made a
245 general assignment to said Robert E. Jenkins, and that said Jenkins is now engaged in settling the estate of said Cherrie under the order of the county court of Cook county, and that said St. Louis Ore & Steel Company, being the consignees of said 146 cars of iron ore, requested this respondent to receive said cars for the account of said ore & steel company alone and not for the account of said Cherrie; but this respondent denies that it agreed so to do. This respondent avers and charges the fact to be that it received said cars subject to the rights of the said Cherrie, at whose instance the said ore & steel company became the consignors thereof, as well as subject to the rights of said ore & steel company as such consignors and as the givers of the order to this respondent to receive the said 146 car-loads of ore for their account.

This respondent admits that it received said 146 car-loads of ore and has used and appropriated the same to its own benefit and of right should account for the same to the owners thereof when discovered.

This respondent, further answering, says that it is not informed save by said petition, and therefore cannot admit or deny, whether said railway company in making delivery of said 146 car-loads of iron ore to this respondent did or did not intend to waive any lien which said railway company had thereon for freight earned in its transportation as aforesaid; and this respondent avers and charges the fact to be that if the said railway company understood that this respondent took said 146 cars of iron ore subject to the payment of said freight thereon, such understanding was not authorized by any statement or promise of this respondent which would
246 be inconsistent with or to the prejudice of the rights of this respondent or the rights of any person having an interest in the said iron ore.

And this respondent denies that it said or did anything whatever to induce the said railway company to believe that this respondent would pay the said freight charges out of the purchase price of said ore.

This respondent, further answering, admits to have been garnisheed on account of the said St. Louis Ore & Steel Company, as stated in the said petition, and that said garnishee proceedings are still pending and undetermined; and this respondent, further answering, avers that it has an outstanding and unsettled account with the said St. Louis Ore & Steel Company growing out of contracts and dealings had and entered into before the appointment of a receiver for said ore & steel company.

This respondent, however, cannot now state what the balance of said account would be, nor in whose favor it will lie when discovered.

This respondent, further answering, says that the same questions involved in the petition of the said railway company, to wit, the payment of freight on said 146 cars of iron ore, are now pending and undetermined before the county court of Cook county in the matter of the estate of said R. M. Cherrie.

[SEAL.] NORTH CHICAGO ROLLING MILLS CO.,
By RICH'D C. HANNAH, *Sec'y.*

Attest: RICH'D C. HANNAH, *Sec'y.*

WILLARD & DRIGGS,
Sol'rs for Respondent, N. C. R. M. Co.

247 UNITED STATES OF AMERICA, }
Northern District of Illinois, Cook County, } *ss:*

Richard C. Hannah, being duly sworn, says he is secretary for the North Chicago Rolling Mill Company and has read the foregoing answer by it subscribed and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

RICHARD C. HANNAH.

Subscribed and sworn to before me this 7th day of November, A. D. 1884.

[NOTARIAL SEAL.] WM. H. McLEAN,
Notary Public.

Endorsed: Filed Nov. 17, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the seventeenth day of November, 1884, came Robert E. Jenkins, assignee of Robert M. Cherrie, by his solicitor, and filed in said clerk's office his objections to the entry of any order upon the petition of the said receivers, together with his affidavit in said entitled cause; which said objections and affidavit are in the words and figures following, to wit:

248 Circuit Court of the United States, Northern District of Illinois.

OLIPHANT
vs. } In Chancery.
ST. LOUIS ORE AND STEEL CO. *et al.*

Now comes Robert E. Jenkins, assignee of Robert M. Cherrie, by Frederic Ullman, his solicitor, and objects to the entry of the order as prayed for herein by Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific Railway Company, and also objects to the entry of any order whatever herein upon the petition of said receivers. Such objection is based upon the affidavit of said Jenkins herewith filed.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Robert E. Jenkins, being duly sworn, says that on the third day of July, 1884, Robert M. Cherrie, mentioned in said petition, made, executed, and delivered to deponent an assignment for the benefit of his creditors under the statutes of this State; that said assignment was duly filed in the offices required by law, and that deponent duly filed his bond as such assignee and entered upon the discharge of his duties as such assignee and is now engaged in the performance and discharge thereof.

That on the thirteenth day of December, 1883, the said Robert M. Cherrie made a contract with the St. Louis Ore and Steel Company for the purchase of a large amount of iron ore from said last-named company, a copy of which said contract is hereto
249 attached, marked Exhibit A, and is hereby made a part hereof; that on the 26th day of December, 1883, said Cherrie made a contract with the North Chicago Rolling Mill Company for the sale and delivery to said last-named company of a portion of the same ore that he had as aforesaid purchased from said St. Louis Ore and Steel Company, a copy of which latter contract, marked Exhibit B, is also attached hereto and made a part hereof.

Deponent further says that both of said contracts had been but partially performed at the time of the assignment to deponent by said Cherrie; that at the time of such assignment a number of cars of ore had been shipped to said Cherrie by said St. Louis Ore and Steel Company and were then in transit; that on learning of said assignment said St. Louis Ore and Steel Company telegraphed said Wabash, St. Louis and Pacific Railway Company stopping delivery thereof, and thereupon and early in said month of July, 1884, one O. L. Garrison, the secretary and treasurer of said St. Louis Ore and Steel Company, came to Chicago, and an arrangement was made between him and deponent by which his company were to be allowed, without hindrance from deponent, to deliver the cars so in transit to the North Chicago Rolling Mill Company and to continue shipments for said North Chicago Rolling Mill Company under the contract of said Cherrie with said last-named company, and that afterwards a large number of cars of ore were shipped by said St. Louis Ore and Steel Company to said North Chicago Rolling Mill Company on account of the said Cherrie contract, and notices thereof were given, in the usual course of trade, directly to said Cherrie as though
250 shipped on his account. Deponent further states that such arrangement was made at the urgent solicitation and request of said Garrison so as to enable his company to deliver ore to the North Chicago Rolling Mill Company at the same prices which that company had agreed to pay said Cherrie therefor, the market prices of ore having since the date of said contract very materially declined. Deponent believed and was advised by his attorney, Frederic Ullman, who was present when such arrangement was made, that under said arrangement said St. Louis Ore and Steel Company had waived any claim which it might otherwise have had against

the estate of said Cherrie for damages for any future breach of said Cherrie's contract with said St. Louis Ore and Steel Company.

Deponent further states that on or about the 25th day of September, 1884, the said St. Louis Ore and Steel Company filed its claim with deponent for the price of ore delivered by it to said Cherrie before his assignment, together with certain other items of indebtedness, amounting in all to the sum of thirty-seven thousand eighty-four and $\frac{71}{100}$ dollars, but making no claim whatever therein for damages by reason of any alleged breach of said contract.

Nevertheless, in violation of such agreement, one E. A. Hitchcock, receiver of said St. Louis Ore and Steel Company under an order of the circuit court of the United States for the eastern district of Missouri, on August 12th, 1884, notified deponent as such assignee that he expected and proposed to deliver the balance of the ore under said contract to deponent or to his order and asking information as to what manner deponent desired the same consigned, and
251 again, on September 11th, 1884, said receiver addressed a letter to deponent asking for instructions regarding the undelivered portion of such contract, stating that he was ready and willing to deliver the same, and asking instructions as to whom it should be consigned, to neither of which letters has deponent made any reply.

That on October 15th, 1884, the said E. A. Hitchcock, receiver as aforesaid, filed with this deponent a proof of claim against said estate, claiming damages in the sum of thirty-three thousand four hundred eighty-nine and $\frac{12}{100}$ (33,489.12) dollars for refusing to receive the undelivered portion of ore sold by said St. Louis Ore and Steel Company to said Cherrie, although no tender thereof has ever been made to deponent except by the two letters aforesaid; and deponent states that the one hundred forty-six (146) cars of ore mentioned in the petition of said Humphreys and Tutt, as deponent is informed, are the same cars which were in transit from the St. Louis Ore and Steel Company to said Cherrie at the time of said assignment, and, with a large number of other cars of ore shipped as aforesaid by said St. Louis Ore and Steel Company afterwards to said North Chicago Rolling Mill Company, in pursuance of the arrangement so made with deponent, constitutes a large claim of said St. Louis Ore and Steel Company against the North Chicago Rolling Mill Company, the amount of which it or its receiver is now endeavoring to collect.

Deponent further states that he is advised and believes that it is contrary to the spirit of said agreement that said receiver should attempt collection of said amount from said North Chicago
252 Rolling Mill Company for ore so delivered under said Cherrie contract after his assignment and at the same time to seek to hold the estate of said Cherrie to said contract and to claim damages from said estate for its non-performance thereof.

Deponent also states that, in his judgment, if the said claim for damages is allowed against said estate, the deponent, as assignee of said Cherrie, ought to be entitled to collect from said North Chicago Rolling Mill Company the contract price for all the ore delivered

under said contract since said assignment; that said receiver is endeavoring, on the one hand, to collect from the North Chicago Rolling Mill Company the contract price for the ore it has delivered to that company under the contract for the alleged breach of which it seeks damages from the estate of said Cherrie, and, inasmuch as the St. Louis Ore and Steel Company is insolvent and in the hands of a receiver, any money which it may receive from the North Chicago Rolling Mill Company on account of such ore will probably be lost to this deponent unless this deponent is properly protected against said claim for damages.

Wherefore deponent objects to this court taking any jurisdiction of the subject-matter of said petition and of making an order in the premises, except upon condition that said receiver of said St. Louis Ore and Steel Company shall withdraw the claim for damages so filed with this deponent and will waive its claim for such damages.

ROBERT E. JENKINS.

Subscribed and sworn to this 7th day of November, A. D. 1884, before me—

[SEAL.] FREDERIC ULLMAN,
Notary Public.

253 EXHIBIT A.

Memoranda of agreement between the St. Louis Ore and Steel Company a corporation under the laws of the State of Missouri, party of the first part and R. M. Cherrie under the firm name of Cherrie & Company of the city of Chicago in the State of Illinois party of the second part, witnesseth:

The said St. Louis Ore and Steel Company hereby agrees to deliver to said Cherrie & Company a quantity of 100,000 gross tons of 2,240 pounds each of Pilot Knob iron ore of the quality and at the price hereinafter stated and to be delivered as follows: Said ore is to be delivered between the first day of December 1883 and the thirty-first day of December 1884, the deliveries for the month of December 1883 to suit the necessities and convenience of both parties as may be arranged; and thereafter the delivery is to be at the rate of 10,000 tons per month during the months of January, February, March, April and May 1884; and the remainder is to be delivered in as near as practicable equal quantities per month during the remaining months of the year 1884. The price of said ore agreed upon between the parties hereto is three dollars and fifty-five cents ($3.55) per gross ton free on board cars East St. Louis, Illinois; the ore to average fifty-eight (58) per cent. of metallic iron, said price being fixed for all shipments to the North Chicago Rolling Mill Company; and for all shipments to other parties, the price is based on fifty-
eight per cent. ore costing $.06\frac{12}{100}$ per unit of metallic iron
254 delivered at East St. Louis; and for the ore containing a
higher per cent. of metallic iron said price shall be increased at the rate of $.06\frac{12}{100}$ per cent. for each additional unit or one per cent. of metallic iron. And for each unit or one per cent. of metallic iron

below fifty-eight (58) per cent. a deduction of eight (8) cents per unit shall be made accordingly, payment for said ore to be made as follows: All ore delivered during any calendar month to be paid for in cash on or before the twenty-fifth day of the calendar month next ensuing, and settlements for said ore shall be made according to the weights of the North Chicago Rolling Mill Company for so much of the ore as may go to that company, and according to the weights of the Joliet Steel Company for so much of the ore as may go to that company, and for any ore that may go to steel mills other than those named, the weights of these mills to be taken as the correct weights and settlements made accordingly. It however being further provided that in the event of any great discrepancy in weights between the shippers and receiver of the ore then the weights of the St. Louis, Iron Mountain, and Southern; or the Wabash Railroad Company shall be accepted as conclusive on both parties.

It is agreed that said ore company shall take samples of each car-load of ore at the mines and have the same analyzed but its own chemist, and said R. M. Cherrie shall also, if he elect so to do, sample each car-load of said ore at the mines and have the same analyzed by his chemist; and the amount of metallic iron in said ore, ascertained by said ore company's analysis, provided it is satisfactory to said R. M. Cherrie, shall determine the average
255 price for each week's delivery. Should the analyses of the two parties differ, then a third party shall be called in to analyze the average samples of both parties and his decision shall be final and binding on both parties to this contract; this provision to apply only to that portion of this contract, sold on the unit basis.

In case of strike among the workmen of the ore company, serious damage to their works and mines by the elements and lack of transportation or any causes beyond their control, the ore company are not to be held to account in damages to R. M. Cherrie.

In witness whereof the said parties of the first and second parts respectively have executed this agreement in duplicate this 13th day of December, A. D. 1883.

(Signed) ST. LOUIS ORE & STEEL COMPANY,
By O. L. GARRISON, *Secretary.*
R. M. CHERRIE.

256 EXHIBIT B.

Memorandum of contract made and entered into this twenty-sixth (26th) day of December A. D. 1883, by and between R. M. Cherrie under the firm name of Cherrie and Company of Chicago Illinois, party of the first part, and the North Chicago Rolling Mill Company a corporation under the laws of Illinois, party of the second part witnesseth: That for the consideration hereinafter mentioned, the party of the first part has hereby sold and agrees to deliver to the party of the second part and the party of the second part agrees to receive fifty thousand (50,000) gross tons of Pilot

Knob (so called) iron ore, the said ore to be mined and shipped from the Pilot Knob mine situated in the State of Missouri, and owned and operated by the St. Louis Ore and Steel Co. a corporation under the laws of Missouri.

The said first party agrees to deliver and the said second party agrees to receive the said ore at the works of said second party at South Chicago or at the works of said second party at North Chicago, at either or both places as may be required by said second party. It is understood however that for so much of the ore as may be delivered at North Chicago works aforesaid, the party of the first part shall not be liable for any cost of delivery beyond the Sixteenth-street yard of the Chicago and Northwestern Railway Co. in Chicago. It being also understood that said first party is now making effort with the railroad transporting the said ore from St. Louis to Chicago,
257 to make the same rate of freight for delivery at works of said second party, North Chicago, as now exists for delivery at works, South Chicago; and succeeding in such effort the said first party will then and in that case make delivery at the works of said second party at North Chicago at the same price per ton as agreed upon for delivery at the works of said second party South Chicago.

The said first party agrees to deliver, and the said second party agrees to receive the ore aforesaid at the rate of from one thousand to seven thousand tons per month as directed by the second party from time to time and commencing January first A. D. 1884 it being understood that all of said fifty thousond tons shall be delivered and received during the year 1884, and in such quantities as may be required by the second party.

It is agreed between the parties hereto that the weights of the said second party shall be taken and accepted as correct, and settlements made accordingly. The said second party agreeing to furnish to said first party statements of weights of all of said ore as received and showing the initial and number of each ore and the gross tare and net weights of same.

The price of said ore agreed upon between the parties hereto is the sum of five dollars and twenty-five cents ($5.25) per gross ton of 2,240 pounds f. o. b. cars at South Chicago or the Sixteenth-street yard of the C. and N. W. R'y Chicago, for such ore as shall be consigned to the Chicago works. The said second party agreeing to make settlements and pay for the same in cash as follows: For all ore delivered during any calender month payments to be made on the fifteenth day of the calender month next ensuing.

258 The first party guarantees to the said second party for and in consideration of the price of five dollars and twenty-five cents per ton named for said Pilot Knob iron ore that the average analysis of said iron ore shall be not less than sixty (60 %) per cent. of metallic iron or more than one one-hundredth of one per cent. (.01 %) of phosphorus with silica lime and alumnia not to exceed silica nine per cent., lime one-half of one per cent., and alumnia one-half of one per cent. The ore to be well mined and free from rock or other deleterious matter, so the average shall not materially

deviate from the above, and to be in no case less than fifty-seven per cent. of metallic iron but averaging sixty per cent. The same to be subject to the analysis of the chemist of said second party, but any differences between the parties relative to analysis of the ore shall be subject to verification by any competent chemist the first party may select. The basis of price being substantially $5.25 per ton for not less than sixty per cent. of metallic iron with .01 % of phosphorus. The said first party hereby grants to said second party the option until the first day of March A. D. 1884, to increase the fifty thousand tons of ore herein provided for to seventy-five thousand tons, the said increase to be at the same price and upon the same terms and conditions as herein stated, except in the time of receiving said ore and which time can be extended from January first 1885 to May fifteenth 1885 if the second party so desires. The 50,000 tons being delivered say in 1884 and the 25,000 tons by May fifteenth 1885.

R. M. CHERRIE.
(Signed) NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *Pres'd.*

Endorsed: Filed Nov. 17, 1884. Wm. H. Bradley, clerk.

259 Afterward, to wit, on the third day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of the receiver herein leave is hereby given him to file a petition for a restraining order in this cause.

On the same day, to wit, on the third day of January, 1885, came Ethan A. Hitchcock, receiver, by his solicitors, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

260 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.*

To the honorable the judges of said court:

Your petitioner, Ethan A. Hitchcock, of St. Louis, in the State of Missouri, respectfully shows that he was on the 21st day of July, 1884, by an order made and entered of record before the commence-

ment of the attachment suits hereinafter mentioned in a certain cause then pending in the circuit court of the United States for the eastern district of Missouri, wherein Robert M. Olyphant was complainant and said St. Louis Ore & Steel Company and others were defendants, duly appointed receiver of all the property, rights, credits, and effects of the said St. Louis Ore & Steel Company, said company then being insolvent; that he immediately accepted the said appointment and entered upon the performance of his duties as such receiver; that he was afterwards, on the 29th day of September, A. D. 1884, by an order of this court duly entered in this cause, appointed receiver of all the property, rights, credits, and effects of the said defendant, The St. Louis Ore & Steel Company, in said northern district of Illinois, and that on the 10th day of October, 1884, he accepted the said appointment and entered upon the discharge of his duties as such receiver; that by virtue of the said appointments all the property, rights, credits, and effects of
261 the said St. Louis Ore and Steel Company became and were vested in your petitioner as such receiver, and he was by said order required to take possession of the same; that the plaintiff- in the attachment suits hereinafter mentioned have acquired no rights as against your petitioner to any of the property, rights, credits, or effects of said company.

Your petitioner further shows that among the assets of said St. Louis Ore & Steel Company are a debt due from the North Chicago Rolling Mill Company to said St. Louis Ore and Steel Company amounting to not less than the sum of fourteen thousand ($14,000.00) dollars, and three claims of said last-named company against the estate of Robert M. Cherrie, insolvent—one for the sum of twenty-seven thousand five hundred twenty-three and $\frac{98}{100}$ ($27,523.98) dollars; another for the sum of fifteen thousand ($15,000) dollars, and a third for unliquidated damages on a certain contract between said Robert M. Cherrie and said St. Louis Ore & Steel Company, amounting to thirty-three thousand four hundred eighty-nine and $\frac{12}{100}$ ($33,489.12) dollars; that all of said claims have been filed with the assignee of said Cherrie, and the two first-mentioned claims have been allowed by him, but no dividend has been declared upon any of said claims, and said last-mentioned claim is contested by said assignee.

Your petitioner further shows that on or about the 21st day of July, A. D. 1884, the Iron Mountain Company, a corporation organized under the laws of the State of Missouri, commenced in the superior court of Cook county, Illinois, a suit in attachment
262 against the said St. Louis Ore & Steel Company upon a claim amounting to nineteen thousand seven hundred eighty-four and $\frac{66}{100}$ ($19,784.66) dollars, and that on the same day the Joliet Steel Company, a corporation organized under the laws of the State of Illinois, commenced in said superior court two suits in attachment against said St. Louis Ore and Steel Company—one for the sum of seven thousand seven hundred seventy-seven and $\frac{7}{100}$ ($7,777$\frac{7}{100}$) dollars, and the other for the sum of ten thousand fifty-one and $\frac{78}{100}$ ($10,051.78) dollars, and that the writs of attachment issued in all

of said suits were duly served on the said North Chicago Rolling Mill Company and upon Robert E. Jenkins, assignee of said Robert M. Cherrie, insolvent, as garnishees, on or about the said 21st day of July, A. D. 1884, but that no property of said St. Louis Ore & Steel Company was attached under said writs.

That the said North Chicago Rolling Mill Company and the said Robert E. Jenkins, assignee, have filed their answers as garnishees in said suits; that the said suit of the said Iron Mountain Company is pending in the said superior court, but the said two suits of the said Joliet Steel Company have been removed to and are now pending in this court on the common-law side thereof, and said plaintiffs therein are seeking by said suits to collect said debts and claims due to said St. Louis Ore & Steel Company as aforesaid and apply the same to the payment of their said demands in said suits, in derogation of the rights of your petitioner.

Your petitioner further shows that it appears by the answer of said North Chicago Rolling Mills Company in the suit of said
263 Iron Mountain Co., a copy of which is hereto attached, marked Exhibit "A," that there are complicated and difficult accounts and claims for unliquidated damages growing out of the same between said North Chicago Rolling Mill Company and said St. Louis Ore and Steel Company; that the answers of said North Chicago Rolling Mill Company in said suits of said Joliet Steel Company are substantially like said Exhibit "A," and your petitioner is advised and believes it will be difficult, if not impossible, to settle and adjust the said accounts and claims as between the plaintiffs in said suits, the said garnishee, and your petitioner by a trial at law in said attachment suits.

Your petitioner further represents that said Robert M. Cherrie on the 3d day of July, A. D. 1884, made a voluntary assignment to said Robert E. Jenkins under the statute of the State of Illinois in such case — and provided, and your petitioner is advised and believes that any moneys in the hands of said Robert E. Jenkins, as assignee of said Robert M. Cherrie, or any claim of said St. Louis Ore and Steel Company against said Cherrie is not liable to the said process of garnishment in the said attachment suits.

Your petitioner further represents that he is entitled to collect the said claims of said St. Louis Ore & Steel Company against the said North Chicago Rolling Mill Company and the estate of said Robert M. Cherrie, insolvent, and to distribute the same among the creditors of said St. Louis Ore and Steel Company without interference from the plaintiffs in said attachment suits, and he therefore prays that an order may be entered herein restraining the said Iron Mountain Company and the said Joliet Steel Company from
264 prosecuting their said suits against said garnishees, and authorizing and directing your petitioner to proceed to collect the said claims of said St. Louis Ore and Steel Company against the said North Chicago Rolling Mill Company and the estate of Robert M. Cherrie, insolvent.

ETHAN A HITCHCOCK, *Receiver*,
By HUTCHINSON & LUFF, *His Sol'rs.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Ethan A. Hitchcock, being duly sworn, says he has read the above petition by him subscribed, and that the same is true.

E. A. HITCHCOCK.

Subscribed and sworn to before me this 31st day of December, A. D. 1884.

[SEAL.]

MORRISON RENSHAW,
Commissioner for the State of Illinois, City of St. Louis, Mo.

265 EXHIBIT "A."

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court Thereof, Nov'r Term, A. D. 1884.

IRON MOUNTAIN COMPANY
vs.
ST. LOUIS ORE AND STEEL CO., Impleading the North Chicago Rolling Mill Company as Garnishee. } Attachment and Garnishee.

And now comes the said North Chicago Rolling Mill Company, summoned as garnishee in the above-entitled suit, and shows cause, etc., as follows:

In answer to the first interrogatory it says that at the date of the service of the garnishee summons in said suit, to wit, July 21, 1884, there was an open, unsettled, and unliquidated account between this respondent and the said St. Louis Ore & Steel Company.

That said account grew out of the receipt of a quantity of iron ore and a quantity of pig-iron from said last-named company, but whether such receipt was wholly or in part for the account of said ore & steel company or its assignee or for the account of one R. M. Cherrie or his assignee or for the account of the Wabash, St. Louis & Pacific Railway Company or its assignee and receiver or whether such receipt was for the account of all of said persons this respondent cannot state with certainty.

266 Nor can this respondent state with certainty what proportion of said receipts was for the account of either one of said persons.

And this respondent, further answering, says that involved in said receipt of iron ore and pig-iron is an unsettled claim for rebate upon a portion of said ore as not being up to the required standard of quality.

That involved also in said unsettled and unliquidated account growing out of the sale by this respondent to said ore and steel company *of* a quantity of railroad rails, a portion of which, so sold, have been delivered, but whether the balance thereof will be received, and, if not, then what the amount of damage will be to this

respondent, cannot now be definitely stated, but this respondent believes it will be a large amount.

That involved also in the unsettled and unliquidated accounts between said ore and steel company and this respondent are three certain garnishee suits in attachment, commenced two by the Joliet Iron & Steel Company July 21, 1884, and one by the E. C. Meacham Arms Company July 22, 1884, against the said St. Louis Ore & Steel Company, all of which are now pending and undetermined, as this respondent is informed and believes, in this court.

To the second, fourth, fifth, and sixth interrogatories this respondent saith no, except as before set forth.

To the said third interrogatory this respondent saith it had none, except as above set forth.

267 And now, having answered all said interrogatories, this respondent prays to be hence dismissed with its reasonable costs.

[CORPORATE SEAL.] NORTH CHICAGO ROLLING MILL CO.,
P'r RICH'D C. HANNAH, *Sec'y.*

STATE OF ILLINOIS, } *ss:*
Cook County, }

Richard C. Hannah, being duly sworn, says he is the secretary of the North Chicago Rolling Mill Company and has read the above and foregoing answers subscribed to by said company and knows the contents thereof, and that the same are true to the best of his knowledge, information, and belief.

RICHARD C. HANNAH.

Subscribed and sworn to before me this 7th day of November, A. D. 1884.

[NOTARIAL SEAL.] WM. H. McLEAN,
Notary Public.

(Endorsed:) Filed Jan'y 3, 1885. Wm. H. Bradley, clerk.

268 Afterward, to wit, on the tenth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the petition of the receiver herein for an injunction filed on the third instant, and after hearing the arguments of counsel the court overrules the prayer of said petition and dismisses said petition without prejudice.

269 Afterward, to wit, on the eighteenth day of January, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes the North Chicago Rolling Mill Company, by George Willard, its solicitor, and asks leave to file an intervening petition in said cause against the Joliet Steel Company, the Iron Mountain Company, and the said St. Louis Ore and Steel Company, and that the court grant an injunction or restraining order against said parties as in said petition prayed, and the court, having read said petition, grants leave to file the same instanter, and it is ordered that the said Joliet Steel Company and the said Iron Mountain Company show cause on Monday, the twenty-fifth instant, why they should not be required to answer the said petition on or before the first day of February next.

And it is further ordered that the said St. Louis Ore and Steel Company answer said petition on or before Monday, the first day of February next.

270 On the same day, to wit, on the eighteenth day of January, 1886, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its intervening petition in said entitled cause; which said petition is in the words and figures following, to wit:

271 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court Thereof. In Chancery.

ROBERT M. OLIPHANT
vs.
ST. LOUIS ORE & STEEL CO. *et al.* } Bill for Appointment of Receiver, etc.

To the Honorable Walter Q. Gresham, judge of said court:

Humbly complaining, your petitioner, the North Chicago Rolling Mill Company, intervening petitioner herein, shows unto your honor as follows:

That it is a corporation of the State of Illinois, organized and existing for the purpose, among other things, of manufacturing railroad rails from iron ore and pig-iron, in the county of Cook in said State.

That on or about the first day of December, 1883, it entered
272 into a contract with the said St. Louis Ore and Steel Company, a corporation of the State of Missouri, which said contract was, and is, in words and figures following, that is to say:

Copy.

This agreement made in duplicate this first (1st) day of December, A. D. 1883, between the North Chicago Rolling Mill Company, party of the first part, and the St. Louis Ore and Steel Company, party of the second part, witnesseth:

First. That for and in consideration of the conditions hereinafter mentioned, and the payments herein provided for, to be made by the party of the second part, the party of the first part agree to furnish, and the party of the second part agree to receive eighteen thousand tons (2,240 lbs.) of No. 1 Bessemer steel rails.

Second. The party of the first part agree to deliver said 18,000 tons of steel rails, free on board cars at their works South Chicago, Illinois, during the months of January, February, March, April, May, June, July, August, September, October, November and December, 1884, in about equal amounts each month. For shipment to the Missouri Pacific Railway Company, or lines operated or leased by said company, and to be consigned as may be hereafter directed.

Third. The pattern of rails which the said parties are to furnish and receive, is to be as follows: The standard pattern of the Missouri Pacific Railway Company, or operated lines, weighing 52 lbs., 56 lbs., 59 lbs., or 63 lbs. per lineal yard, as per templet to be furnished by the second party.

273 Fourth. Said rails to be drilled for bolts as follows: End of rail to center of first hole 52 lbs., $2\frac{7}{8}$, (56 and 63 lbs., $2\frac{7}{8}$) 59, $2\frac{5}{8}$ inches; center of first to center of second holes, 52 lbs., 5 (56 and 63 lbs., 6 in.), 59 lbs., 5 inches. Diameter of hole, 52 lbs., 1 (56 and 63 lbs., 1), 59 lbs., $\frac{7}{8}$ inches; 52 lbs. rail $1\frac{5}{8}$ inches from flange to center of hole; 56 lbs. and 63 lbs. rail are $1\frac{3}{4}$ inches from flange to center of hole; 59 lbs. rail is $1\frac{23}{32}$ inches from flange to center of hole. The above drilling may be changed at any time by written instructions (giving drilling) by the second party.

Fifth. The party of the first part agree that said 18,000 tons of steel rails shall be of their best standard quality of manufacture, with an allowance of three per cent. of second-quality rails, and which second-quality rails the second party agrees to receive in addition to the 18,000 tons of No. 1 rails, providing the first party shall make that amount of second-quality rails while rolling the 18,000 tons of number one rails.

Sixth. The length of the rails to be thirty feet, with the usual allowance of ten per cent. for shorter lengths, but none to be less than twenty-two feet, and all to be full feet in length.

Seventh. The price which the party of the second part agrees to pay to the party of the first part is thirty-five dollars ($35.00) for each gross ton of 2,240 lbs. of No. 1 rails, and ($33.25) thirty-three dollars and twenty-five cents per gross ton, for the second-quality rails delivered as hereinbefore specified.

Eighth. Settlement to be made in accordance with the weights of said first party at their works, and payments for the rails to be

made in cash on the tenth day of each month, for all rails delivered during the previous month.

274 Ninth. The said second party is hereby permitted at all times to have any competent person present to inspect said rails as to quality and weights, and such person's inspection shall be accepted by both parties to this contract.

Tenth. In case of a strike among the workmen of the party of the first part, destruction of or serious damage to their works by fire or the elements, or any cause of delay beyond their control, the party of the first part are not to be held strictly to the time of delivery named herein, but shall deliver as promptly as possible after such damage has been repaired or strike ended.

Eleventh. It is further agreed between the parties hereto, that the cars on which the said steel rails are to be loaded, at the works of the said first party, shall be furnished to said first party by the second party, for the delivery at the time herein specified, and in the absence of the furnishing of cars upon which to load said rails, enabling the said first party to make their deliveries, as herein specified, then the said second party shall make their settlements and pay for said rails on the tenth day of the month, the same as though said rails had been delivered; and the non-delivery of cars shall in no way relieve the said second party from the prompt payment for the rails on the tenth day of the month, as specified herein.

See note below.

THE NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*
THE ST. LOUIS ORE & STEEL COMPANY,
By O. L. GARRISON, *Secretary.*

275 The Missouri Pacific railway guarantee clause, showing that guarantee of rails is waived by the second party, and the Missouri Pacific guarantee is waived by the first party.

CHICAGO, *Dec.* 22, 1883.

It is hereby understood between the parties, that the first party hereby waive the guarantee of this contract by the Missouri Pacific Railway Company, and the second party, as per telegram attached hereto, hereby waive the guaranteeing of the rails by the first party, as per written clause attached to the ninth clause of this contract, and which written clause is struck out by mutual agreement of both parties hereto.

NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*
CHERRIE & CO.,
Agents for the St. Louis Ore and Steel Company.

This contract was signed by the North Chicago Rolling Mill Company after clause relating to guarantee of rails was struck out.

Witness:

HARVEY C. BROWN.

Copies of Telegrams Attached to Contract.

(Copy.)

ST. LOUIS, MO., *Dec.* 20, 1883.

O. L. Garrison, St. Louis Ore and Steel Co.

Authorize us to scratch out guarantee clause in North mill contract. None of the mills here give this, and Potter positively refuses to sign with it in—everything else all right. Answer quick. Paid.

CHERRIE & CO.

276 DEC. 22, 1883.

Dated St. Louis, Mo., 22.

To Cherrie & Co.:

You are hereby authorized to strike out guarantee clause in North Chicago Rolling Mill Company contract for eighteen thousand tons of steel rails sold our company.

O. L. GARRISON, *Secretary.*

That the said St. Louis Ore & Steel Company and your petitioner duly entered upon a performance of said contract, and up to the 10th day of July, 1884, the terms and conditions of said contract were substantially carried out and fulfilled by the parties thereto, but that on the said 10th day of July the said St. Louis Ore & Steel Company failed to pay your petitioner the sum of $21,536.56, which on said day became and was due and payable to your petitioner for rails delivered during the previous month, and the said sum still remains unsettled with your petitioner.

That said Ethan A. Hitchcock, as receiver herein, undertook to carry out said contract, but did not succeed in doing so further than to receive on account of rails receivable in the month of July, 1884, two hundred and sixty tons, or thereabouts, of rails, and to pay for the same in the month of August following, although your petitioner was ready and willing and offered to fully carry out said contract on its own part. And your petitioner avers and charges the fact to be that on the 1st day of January, A. D. 1885, when the time for the final performance of said contract expired, a balance of ten thousand six hundred and eighteen tons of rails, or thereabouts, re-
277 mained unreceived and unpaid for under said contract or otherwise, and still remain unreceived and unpaid for.

Your petitioner further shows unto your honor that to enable it to carry out the aforesaid contract with the said St. Louis Ore and Steel Company, and other contracts of a like nature, it necessarily had to and did provide for and obtained large quantities of iron ore and pig metal, and upon consideration that the said St. Louis Ore and Steel Company had entered into the written contract aforesaid, your petitioner purchased, and, as your petitioner is informed and believes, and charges the fact to be, the said St. Louis Ore and Steel

Company, upon consideration of said written contract, sold to your petitioner from time to time from about the 1st day of December, 1883, until the 10th day of July, 1884, large quantities of pig metal at certain prices per ton of two thousand, four hundred and sixty-eight pounds, to be paid for in cash on the 15th day of the month following the month in which delivery should be made.

Your petitioner avers that during the month of July, 1884, and prior to the 21st day thereof, your petitioner came into possession, from the said St. Louis Ore and Steel Company, of the following-described parcels of pig metal, that is to say: one parcel of $975\frac{60}{2268}$ tons of pig metal, which was to be paid for in cash on the 15th day of August, 1884, at the rate of $18 per ton, free on board cars at the works of your petitioner in the county of Cook aforesaid; and one parcel of $13\frac{14}{22}\frac{16}{68}$ tons of pig metal to be paid for in cash on the 15th day of August, 1884, at the rate of $18.75 per ton free on board cars at the works of your petitioner aforesaid.

Your petitioner further shows unto your honor, and avers
278 that in consideration also of the aforesaid contract with the said St. Louis Ore and Steel Company for the manufacture of rails, your petitioner purchased of, and, as your petitioner is informed and believes, and charges the fact to be, the said St. Louis Ore & Steel Company, in consideration of said rail contract, sold to one R. M. Cherrie, doing business under the firm name of R. M. Cherrie & Company, a large quantity of iron ore from the mines of said St. Louis Ore & Steel Company at Pilot Knob, in the State of Missouri, which said purchase was and is evidenced by a certain contract in writing, in words and figures following, to wit:

Memorandum of contract made and entered into this twenty-sixth (26th) day of December, A. D. 1883, by and between R. M. Cherrie, under the firm name of Cherrie and Company, of Chicago, Illinois, party of the first part, and the North Chicago Rolling Mill Company, a corporation under the laws of Illinois, party of the second part, witnesseth:

That for the consideration hereinafter mentioned, the party of the first part has hereby sold, and agrees to deliver to the party of the second part, and the party of the second part agrees to receive fifty thousand (50,000) gross tons of Pilot Knob (so called) iron ore, the said ore to be mined and shipped from the Pilot Knob mine, situated in the State of Missouri, and owned and operated by the St. Louis Ore and Steel Company, a corporation under the laws of Missouri.

The said first party agrees to deliver, and the said second party agrees to receive the said ore at the works of said second party at South Chicago, or the works of said second party at North Chicago, at either or both places, as may be required by said second party. It is understood, however, that for so much of the ore
279 as may be delivered at North Chicago works aforesaid, the party of the first part shall not be liable for any cost of delivery beyond the 16th-street yard of the Chicago and Northwestern Railway Company in Chicago. It being also understood that said first party is now making efforts with railroad transporting the said

ore from St. Louis to Chicago, to make the same rate of freight for delivery at works of said second party, North Chicago, as now exists for delivery at works, South Chicago; and succeeding in such effort the said first party will then and in that case make delivery at the works of said second party, North Chicago, at the same price per ton as agreed upon for delivery at the works of said second party, South Chicago.

The said first party agrees to deliver, and the said second party agrees to receive the ore aforesaid at the rate of from one thousand to seven thousand tons per month, as directed by the second party from time to time, and commencing January first, A. D. 1884, it being understood that all of said fifty thousand tons shall be delivered and received during the year 1884, and in such quantities monthly as may be required by the second party.

It is agreed between the parties hereto that the weights of the said second party shall be taken and accepted as correct, and settlements made accordingly. The said second party agreeing to furnish to said first party statements of weights of all of said ore as received, and showing the initial and number of each car and the gross, tare, and net weights of same.

The price of said ore agreed upon between the parties hereto, is the sum of five dollars and twenty-five cents ($5.25), per gross ton of 2,240 pounds, f. o. b. cars at South Chicago, or the 16th-street yard of the Chicago and Northwestern Railway, Chicago, for such ore as shall be consigned to the Chicago works. The said second party agreeing to make settlements and pay for the same in cash as follows: for all ore delivered during any calendar month, payments to be made on the 15th day of the calendar month next ensuing.

280

The first party guarantees to the said second party for and in consideration of the price of five dollars and twenty-five cents per ton named for said Pilot Knob iron ore, that the average analysis of said iron ore shall be not less than sixty (60%) per cent. of metallic iron, or more than one one-hundredth of one per cent. (.01%) of phosphorus, with silica, lime and alumina, not to exceed silica nine per cent., lime one-half of one per cent., and alumina one-half of one per cent. The ore to be well mined and free from rock or other deleterious matter, so the average shall not materially deviate from the above, and to be in no case less than fifty-seven per cent. of metallic iron, but averaging sixty per cent. The same to be subject to the analysis of the chemist of said second party, but any differences between the parties relative to analysis of the ore shall be subject to verification by any competent chemist the first party may select. The basis of price being substantially ($5.25) per ton, for not less than sixty per cent. of metallic iron with .01% of phosphorus.

The said first party hereby grants to said second party the option until the first day of March, A. D. 1884, to increase the fifty thousand tons of ore herein provided for, to seventy-five thousand tons, the said increase to be at the same price and upon the same terms and conditions as herein stated, except in the time of receiving said

ore and which time can be extended from January 1, 1885, to
281 May 15, 1885, if the second party so desires. The 50,000 tons being delivered say in 1884, and the twenty-five thousand tons by May 15, 1885.

R. M. CHERRIE,
North Chicago Rolling Mill Co.,
By O. W. POTTER, *Pres't.*

Your petitioner avers that the parties to said contract duly entered upon a performance thereof and continued in such performance until the 3d day of July, 1884, when the said R. M. Cherrie made an assignment to one R. E. Jenkins for the benefit of the creditors of said Cherrie, and that thereupon, without the assent of your petitioner, further deliveries of iron ore by said Cherrie ceased. That your petitioner, to enable it to fulfill its said written contract with the said St. Louis Ore & Steel Company, and its contracts with other companies for the manufacture of rails, agreed verbally with the said last-named company on or about the 7th day of July, 1884, to receive from said company, and said company agreed to deliver to your petitioner, iron ore upon the same terms and conditions as contained in the aforesaid written contract with said Cherrie. And your petitioner avers that, pursuant to said verbal agreement last aforesaid, it received from said St. Louis Ore & Steel Company $5{,}163\frac{220}{240}$ tons of iron ore, at your petitioner's works in Cook county aforesaid. But your petitioner, for the accommodation of said St. Louis Ore & Steel Company, paid transportation charges on account of said ore the sum of $4,839.10, and likewise for the account and accommodation of said St. Louis Ore and Steel Company paid the transportation charges on said two parcels of pig metal, amounting to the sum of $1,483.11.

282 Your petitioner further shows that the parcel of iron ore aforesaid did not possess the amount of metallic iron required by the verbal agreement with said St. Louis Ore and Steel Company, but fell short of said requirement to the amount and value of $458.66, which said amount, by reason of the shortage aforesaid, constituted, on the 15th day of August, 1884, a just and proper charge by your petitioner against the said St. Louis Ore and Steel Company, and still constitutes such just charge.

And your petitioner further shows unto your honor that by reason of the aforesaid default in the performance on the part of the said St. Louis Ore and Steel Company by failing to make payment on July 10, 1884, for the rails delivered by your petitioner in the month of June preceding, your petitioner was damaged to the extent of about $100, a little more or less, and that owing to the failure of the said last-named company to take and pay for the full amount of rails contracted for in said written agreement dated December 1, 1883, your petitioner was unable to use a corresponding amount of material in the manufacture of rails at the price of $35 per ton of 2,240 pounds, and as the best disposition which your petitioner could make of the material which your petitioner had on hand for the purpose of making the balance of 10,618 tons of rails, or there-

abouts, due under said contract, your petitioner put said material into the manufacture of rails at the price — $29.50 per ton, or thereabouts, the market price of such materials and of rails having depreciated in the market from about the 20th day of July, 1884, until on and after the 1st day of January, 1885. And your petitioner avers that if the aforesaid default on the part of the St. Louis Ore and Steel Company had not occurred, the whole or a large portion of the identical iron and pig metal received from said company in the month of July aforesaid, would have been used up in the manufacture of the balance of the rails not taken by the St. Louis Ore and Steel Company, if the said company had taken all the rails required to be taken under said contract as aforesaid. And your petitioner avers that in consequence of the nonperformance of said contract on the part of said ore and steel company in not taking and paying for the balance of said rails, your petitioner suffered damage to the extent of $28,390.16, or thereabouts.

283

Your petitioner further shows unto your honor that on the 21st day of July, 1884, the Joliet Steel Company, a corporation of the State of Illinois, instituted two several suits at law in the superior court of Cook county, Illinois, against the said St. Louis Ore and Steel Company in attachment, one based on an alleged indebtedness from said last-named company of about $8,000, and the other based upon an alleged indebtedness of about $10,000, and your petitioner on the same day was summoned therein as garnishee.

That subsequently, and on or about the fifteenth day of September, 1884, both of said suits were removed into this court, the first of which is numbered nineteen thousand two hundred and thirty-five (19235), and the second of which is numbered nineteen thousand two hundred and thirty-six (19236), and for accurate information as to all the steps that have been taken in said two suits, respectively, your petitioner begs leave to refer to the files therein and to the records of this court, and make them a part hereof. But your petitioner shows unto your honor that as garnishee in said suits, it set forth in substance the aforesaid dealings between your petitioner and said company in respect to the purchase and sale of iron ore and pig metal, and the purchase and sale of steel rails to be manufactured by your petitioner, and the default on the part of said company to fulfill said rail contract. And your petitioner claimed in each one of said two causes, that the account, correctly stated, between your petitioner and said company, was as follows, to wit:

284

St. Louis Ore & Steel Company to the North Chicago Rolling Mill Company, Dr.

To damages non-receipt of steel rails	$28,390 16
" damages non-payment for rails in July, delivered in June	100 00
" steel rails delivered	21,536 56
" freight paid for account St. L. O. & S. Co.	6,322 21
" shortage in ore	458 66
	$56,807 59

Contra.

By iron ore	$27,110 90
" pig metal	17,805 92
	$44,916 82
Balance due the North Chicago Rolling Mill Company	11,890 77
	$56,807 59

Your petitioner annexes hereto as Exhibit A a copy of its said original and supplemental answer as garnishee in each of the two causes aforesaid, and makes the same a part of this petition.

And your petitioner avers that upon the trial of the issues
285 between your petitioner and the plaintiff in said causes your petitioner introduced proof fully sustaining the account aforesaid including the items of damage aforesaid. But your petitioner shows unto your honor that it was ruled in said causes that said items of unliquidated damages could not be recouped and set off in said causes or either of them, because the nature of said causes allowed only the application of strict rules of law and precluded the application of equitable rules.

Your petitioner avers that the damages claimed as aforesaid grew out of the subject-matter of said dealings between said St. Louis Ore and Steel Company, and that said company made default in the performance of said rail contract in respect to the payment of moneys thereunder before the time of the service of said writs of garnishment and in consequence of such default damages occurred to your petitioner before the service of said writs of garnishment. That subsequent to the service of said writs of garnishment the said St. Louis Ore and Steel Company made default in the performance of said rail contract in respect to the taking of rails and paying for the same, and such defaults continued from thence hitherto.

That at the time of the service of said writs of garnishment, your petitioner was indebted to said company to the amount of said material received as aforesaid but the same was not due or payable until the 15th day of August, 1884, and before the time last aforesaid a default on the part of said St. Louis Ore and Steel Company both in respect to the receipt of rails and payment for rails had taken place, which caused damage to your petitioner, which default and which damage was continuously increased by said St. Louis Ore and Steel Company during the remaining period within
286 which said contract was to be performed, to wit: during the latter part of the year 1884.

Your petitioner further shows unto your honor that on the 7th day of the present month (January, 1886) a judgment was entered in the aforesaid suit No. 19235 for the sum of $8,466.64, and that a verdict in said suit No. 19236 has been rendered in favor of the plaintiff for the sum of $10,051.78, and your petitioner is informed and believes that it is the intention of the said Joliet Steel Company and of the said St. Louis Ore and Steele Company to proceed

to judgment against your petitioner as garnishee in said two causes pursuant to the ruling of the court therein as aforesaid, and thereby to deprive your petitioner of all benefit of recoupment and set-off of the damages aforesaid.

Your petitioner avers that said St. Louis Ore and Steel Company is insolvent, and unless your petitioner shall be allowed to recoup and set off the damages aforesaid in the settlement of accounts between said company and your petitioner, the same will be lost to your petitioner.

And your petitioner further shows unto your honor that the suit of the Iron Mountain Company against the said St. Louis Ore and Steel Company, wherein your petitioner was garnisheed, as set forth in the original answer of your petitioner, a copy of which said answer is hereto annexed, marked Exhibit A, and made a part of this petition is, as your petitioner is informed, and believes, and charges the fact to be, about to be called for trial against your petitioner as garnishee aforesaid, and that it is the intention of said Iron Mountain Company to press said cause to trial against your petitioner, before the two aforesaid suits of the Joliet Steel
287 Company, now pending in this court, and before the questions of liability of your petitioner therein, are disposed of, and before the question of the liability of your petitioner herein is disposed of upon this petition.

Your petitioner avers that so far as your petitioner is concerned, the issues in the said cause of the Iron Mountain Company, involves the same subject-matter, and the same issues which were and are involved and raised in the said suits of the Joliet Steel Company aforesaid.

And your petitioner fears that the said superior court of Cook county will follow the ruling of this court, and hold that the matter of recoupment and set-off of your petitioner, can be allowed only in a court of equity. And that under the strict rules of law a judgment will be entered against your petitioner, as garnishee aforesaid, for the same supposed assets of the said St. Louis Ore and Steel Company, as are sought to be here obtained by the said Joliet Steel Company and that thereby your petitioner will be greatly endangered, harassed and prejudiced in respect to its account with the said St. Louis Ore and Steel Company, and that to enable it to protect itself from a double payment as garnishee aforesaid, it will if the said Iron Mountain Company is not restrained from prosecuting said cause, be compelled to ask a court of equity for protection against the danger of such double payment.

Your petitioner further shows that the said cause of the Iron Mountain Company, against the said St. Louis Ore and Steel Company, is numbered 92695, and that the present term number of said cause is 928.

Wherefore, your petitioner prays that this court will take cognizance of this petition. That the court will in some proper way, settle any and all issues which, if any, shall be raised upon
288 this, your petitioner's complaint, and that when settled, the full amount found to be due to your petitioner may be

recouped and set off in the settlement and ajustment of the dealings between it and the said St. Louis Ore and Steel Company, and that your petitioner may have a decree in its favor for any balance found to be due to it upon such adjustment, and that the said Joliet Steel Company and the said Iron Mountain Company may be held and decreed to abide by such adjustment.

And your petitioner prays that until the settlement and adjustment of the whole of said account, including the damages aforesaid, the said Joliet Steel Company and the said St. Louis Ore and Steel Company may be restrained from further prosecuting the said causes numbered 19235 and 19236 in this court, and that the said Iron Mountain Company and the said St. Louis Ore and Steel Company may be restrained from further prosecuting said suit numbered 928 in the said superior court of Cook county until the further order of this court, and that such restraining order and orders may, upon the final hearing hereof be perpetual, and that your petitioner may have such other and further relief in the premises as justice and equity shall require, and to your honor shall seem meet.

Your petitioner further prays that it have leave to file this petition, and that an order may be entered herein requiring the said St. Louis Ore and Steel Company and the said Joliet Steel Company and the said Iron Mountain Company to answer said petition, but not under oath, answer under oath being hereby expressly waived, and likewise without oath to show cause within a time to be fixed by your honor why the relief herein asked shall not be given.

289 And your petitioner, as in duty bound, will ever pray, etc.

NORTH CHICAGO ROLLING MILL COMPANY,

[SEAL.] By O. W. POTTER, *President.*

WILLARD & DRIGGS,
Att'ys for Petitioner.

Attest: RICH'D C. HANNAH, *Sec'y.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Orrin W. Potter, being duly sworn, says that he is the president of The North Chicago Rolling Mill Company, the petitioner in the foregoing intetvening petition, and as such president is acquainted with the business transactions of said company; that affiant has read the foregoing petition and knows the contents thereof, and that the same is true except the matters therein set forth on information and belief, and as to those matters the same are true to the best of his knowledge, information, and belief.

ORRIN W. POTTER.

Subscribed and sworn to before me this 21st day of January, A. D. 1886.

WM. H. McLEAN,

[SEAL.] *Notary Public.*

290 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof.

THE JOLIET IRON AND STEEL COMPANY
vs.
THE ST. LOUIS ORE AND STEEL COMPANY, } No. 456. Attachment.
THE NORTH CHICAGO ROLLING MILL COMPANY, Garnishee.

And now comes the said North Chicago Rolling Mill Company, summoned as garnishee in the above-entitled suit, and shows cause, etc., as follows:

In answer to all the interrogatories propounded by the said Joliet Iron and Steel Company this respondent says that at the date of the service of the garnishee summons in said suit, to wit, July 21, 1884, there was an open and unsettled account between this respondent and the St. Louis Ore and Steel Company; that said account grew out of the receipt of iron ore and a quantity of pig-iron from said last-named company, but whether said receipt was wholly or in part for the account of said ore and steel company or its assignee, or for the account of one R. M. Cherrie or his assignee, or for the account of the Wabash, St. Louis and Pacific Railway Company or its receivers and assignees, or for the account of the Boatmen's Savings Bank of St. Louis, Mo., or for the account of all said persons this respondent cannot state with certainty, nor can this respondent state with certainty what proportion of that which may be due from this respondent on account of the receipt of said iron ore and of said pig-iron belongs to any one of said persons.

This respondent, further answering, says that involved in said account is an unsettled claim by this respondent for a rebate
291 upon a portion of said ore as not being up to the required standard of quality, the amount of which said claim cannot now be stated with certainty; that involved also in said account is an unsettled claim by this respondent growing out of a sale of said railroad rails to said ore and steel company, the amount of which said claim cannot now be stated with certainty.

Involved also in said account for iron ore and pig-iron received as aforesaid are the claims of certain attachment creditors, viz., the Iron Mountain Company, which, on the 21st day of July, 1884, caused this respondent to be garnished in a certain suit then pending in the superior court of Cook county, wherein the said Iron Mountain Company is plaintiff and the said St. Louis Ore and Steel Company is defendant.

The said Joliet Iron and Steel Company, which, on the 21st day of July, 1884, caused this respondent to be garnished in a certain suit pending in said superior court, wherein the said Joliet Iron and Steel Company is plaintiff and the said St. Louis Ore and Steel Company is defendant, both of which causes are still pending and undetermined; and, now, having answered all of said interrogatories,

this respondent prays to be hence dismissed with its reasonable costs.

NORTH CHICAGO ROLLING MILL CO.,
[SEAL.] By RICH'D C. HANNAH, *Sec'y.*

Attest: RICH'D C. HANNAH, *Sec'y.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Richard C. Hannah, being duly sworn, says that he is the secretary of the above-named North Chicago Rolling Mill Com-
292 pany; that he has read the foregoing answer signed by said company and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

RICH'D C. HANNAH.

Subscribed and sworn to before me this 21st day of November, 1884.

[SEAL.] WM. H. McLEAN,
Notary Public.

(Filed November 24, 1884.)

EXHIBIT A.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof, December Term, A. D. 1884.

THE JOLIET STEEL COMPANY
vs.
THE ST. LOUIS ORE AND STEEL COMPANY, The North Chicago Rolling Mill Company Being Summoned as Garnishee.

The Amended and Supplemental — of the North Chicago Rolling Mill Company.

And now comes the said North Chicago Rolling Mill Company, by Willard & Driggs, its attorneys, and by way of amended and supplemental answer as garnishee in the above-entitled cause and in addition to its previous answer herein says—

That this respondent, since the filing of its answer herein on the 25th day of November, 1884, the unsettled claims therein referred to of this respondent against the said St. Louis Ore and Steel Com-
pany growing out of the dealings between this respondent
293 and said company have matured and are now susceptible of proof substantially as follows, to wit:

That this respondent and the said St. Louis Ore and Steel Company, on or about the first day of December, 1883, entered into an agreement in writing in words and figures following, to wit:

DEC. 20, 1883.

O. L. Garrison, St. Louis Ore & Steel Co., St. Louis, Mo.:

Authorize us to scratch out guarantee clause in North mill contract. None of the mills here give this, and Potter positively refuses to sign with it in; everything else all right. Answer quick.

Paid ore acc.

CHERRIE & CO.

Copy of Telegram.

DEC. 22, 1883.

St. Louis, Mo., 22.

Cherrie & Co.:

You are hereby authorized to strike out guarantee clause in North Chicago Rolling Mill Company contract for eighteen thousand tons of steel rails sold our company.

O. L. GARRISON, *Sec'y.*

294 Copy.

This agreement made in duplicate this first (1st) day of December A. D. 1883 between the North Chicago Rolling Mill Company, party of the first part and the St. Louis Ore and Steel Company, party of the second part witnesseth.

First. That for and in consideration of the conditions hereinafter mentioned, and the payments herein provided for, to be made by the party of the second part, the party of the first part agree to furnish and the party of the second part agree to receive eighteen thousand tons (2,240 lbs.) of No. 1 Bessemer steel rails.

Second. The party of the first part agree to deliver said 18,000 tons of steel rails, free on board cars at their works South Chicago Illinois, during the months of January, Feb-uary, March, April, May, June, July, August, September, October, November and December, 1884, in about equal amounts each month.

For shipment to the Missouri Pacific Railway Company, or lines operated or leased by said company and to be consigned as may be hereafter directed.

Third. The pattern of rails which the said parties are to furnish and receive is to be as follows:

The standard pattern of the Missouri Pacific Railway Company or operated lines weighing 52 + + 56 + + 59 + + or 63 + + per lineal yard as per templet to be furnished by the second party.

Fourth. Said rails to be drilled for bolts as follows:

	52 #	56 & 63	59 #	
End of rail to center of first hole	2 7/8	2 7/8	2 5/8	inches.
	52	56 & 63	59	
Center of first to center of second hole	5 in.	6 in.	5 in.	*inches.*

	52, 48	56 #, 63 #	59 #	
Diemeter of hole	1	1	7/8	inches.

295 The above drilling may be changed at any time by written instructions (giving drilling) by the second party.

Fifth. The party of the first part agree that said 18,000 tons of steel rails shall be of their best standard quality of manufacture, with an allowance of three per cent. of second-quality rails which second-quality rails the second party agrees to receive in addition to the 18,000 tons of No. 1 rails providing the first party shall make that amount of second-quality rails while rolling the 18,000 tons of number one rails.

Sixth. The lengths of the rails to be thirty feet, with the usual allowance of ten per cent. for shorter lengths but none to be less than twenty-two feet, and all to be full feet in length.

Seventh. The price which the party of the second part agrees to pay to the party of the first part is thirty-five dollars ($35.00) for each gross ton of 2,240 lbs. of No. 1 rails and $33.25 thirty-three dollars and twenty-five cents per gross ton for the second quality rails, delivered as hereinbefore specified.

Eighth. Settlement to be made in accordance with the weights of said first party at their works and payments for the rails to be made in cash on the tenth day of each month for all rails delivered during the previous month.

Ninth. The said second party is hereby permitted at all times to have any competent person present to inspect said rails as to quality and weights and such person's inspection shall be accepted by both parties to this contract.

296 Tenth. In case of a strike among the workmen of the party of the first part, destruction of or serious damage to their works by fire or the elements or any cause of delay beyond their control the party of the first part are not to be held strictly to the time of delivery named herein, but shall deliver as promptly as possible after such damage has been repaired or strike ended.

Eleventh. It is further agreed between the parties hereto, that the cars on which the said steel rails are to be loaded, at the works of the said first party shall be furnished to said first party by the second party, for the delivery at the time herein specified and in the absence of the furnishing of cars upon which to load said rails, enabling the said first party to make their deliveries as herein specified, then the said second party shall make their settlements and pay for said rails on the tenth day of the month, the same as though said rails had been delivered; and the non-delivery of cars shall in no way relieve the said second party from the prompt payment for the rails on the tenth day of the month as specified herein.

See note below.

THE NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*
THE ST. LOUIS ORE AND STEEL COMPANY,
By O. L. GARRISON, *Sec'y.*

December 1st, 1883.

This contract was signed by the North Chicago rolling mill after clause relating to guarantee of rails was struck out.

Witness: HARVEY C. BROWN.

The Missouri Pacific railway guarantee clause showing that guarantee of rails is waived by the second party and the Missouri Pacific guarantee is waived by the first party.

297 CHICAGO, *Dec.* 22, 1883.

It is hereby understood between the parties that the first party hereby waive the guarantee of this contract by the Missouri Pacific Railway Co. and the second party, as per telegrams attached hereto, hereby waive the guaranteeing of the rails by the first party, as per written clause attached to the ninth clause of this contract, and which written clause is struck out by mutual agreement of both parties hereto.

NORTH CHICAGO ROLLING MILL CO.,
By O. W. POTTER, *President.*

CHERRIE & CO.,
Ag'ts for the St. Louis Ore and Steel Co.

(Endorsed:) Ent. 167–169. North Chicago Rolling Mill Co. steel-rail contract with the St. Louis Ore and Steel Co.; date, Dec. 1st, 1883; tons, 18,000; deliveries during the year 1884.

298 That said St. Louis Ore and Steel Company did not on its part perform said contract, but failed and neglected to take and receive the installment of rails which, under said contract, were receivable during the months of July, August, September, October, November, and December, which said several installments aggregated $10{,}881\frac{900}{2240}$ tons, or thereabouts, although this respondent was capable, ready, and willing and offered to furnish and deliver the said several installments of rails which under said contract were receivable by said St. Louis Ore and Steel Company during the months last aforesaid.

That by reason of the failure of the said St. Louis Ore and Steel Company to fulfill its said contract, as above stated and set forth, this respondent suffered loss and damage in the sum of $28,390.16, for which said amount this respondent is advised by counsel and believes and charges the fact to be that the said St. Louis Ore and Steel Company is liable to this respondent in damages and is legally bound to pay the same to this respondent.

That said St. Louis Ore and Steel Company is further indebted to this respondent in the sum of $21,536.56 for rails furnished to said company in the month of June, 1884, under the aforesaid contract, and in the sum of $6,322.21 for freight charges paid by this respondent for the account of said St. Louis Ore and Steel Company on ore and pig metal, and the sum of $458.66 for shortage in the required quality of certain iron ore sold and delivered to this respondent by said St. Louis Ore and Steel Company, as hereinafter stated.

That to enable this respondent to meet its obligations under the

aforesaid contract between it and the said St. Louis Ore and Steel Company it purchased of the said company a large quantity of iron ore of a certain grade, to be delivered at the works of
299 this respondent in Cook county, Illinois, free of transportation charges and to be paid for at the rate of $5.25 per ton, and a large quantity of pig metal, to be paid for—some at the rate of $18.00 per ton and some at the rate of $18.75 per ton of 2,240 pounds, to be delivered at the works of this respondent in Cook county, Illinois, free of transportation charges, in all aggregating the sum of $44,916.82.

That if the said St. Louis Ore and Steel Company had fulfilled its said contract for the purchase of steel rails from this respondent as aforesaid and had paid to this respondent for the steel rails which the said company did receive from this respondent under said contract and had paid the aforesaid freight charges on the ore and pig metal or had reimbursed this respondent in the sum or sums which it had paid for the account of said St. Louis Ore and Steel Company in that regard, and if the said iron ore so as aforesaid bought by this respondent from said St. Louis Ore and Steel Company had been of the required quality, then in such case this respondent would have been indebted to the said St. Louis Ore and Steel Company in the sum of $44,916.82.

But this respondent is advised by counsel and believes and charges the fact to be that out of the aforesaid sums due to this respondent from the said St. Louis Ore and Steel Company and which aggregate the sum of $56,807.53 it has the legal and equitable right to set off a sum equal to the aforesaid amount of $44,916.82; wherefore this respondent says and charges the fact to be that at the time of the service of said writ of garnishment it was not indebted to the said St. Louis Ore and Steel Company and has not since become indebted to said company, but that in an account between this respondent and the said St. Louis Ore and Steel Company, as the same has matured upon accounts and contracts existing between the
300 said companies at the time of the service of said writs of garnishment, there is a balance of $11,890.77 due to this respondent from said St. Louis Ore and Steel Company, to wit:

St. Louis Ore and Steel Company to the North Chicago Rolling Mill Company, Dr.

To damages for non-receipt of steel rails		$28,390 16
To damages for non-payment, July 10th, 1884		100 00
To steel rails delivered and not paid for		21,536 56
To freight paid for account St. L. O. & S. Co.		6,322 21
To shortage on ore		458 66
		$56,807 59
Contra.		
By iron ore	$27,110 90	
By pig metal	17,805 92	
		44,916 82
Balance		$11,890 77

And this respondent, further answering, avers that the said St. Louis Ore and Steel Company is insolvent, and that unless this respondent is allowed to set off its said claim against said ore and steel company in manner aforesaid it will lose the amount so as aforesaid due to it from the said St. Louis Ore and Steel Company.

This respondent, further answering, says that it is informed and believes and charges the fact to be that the Boatman's Bank of St. Louis, a corporation having its principal office in the city of St. Louis, in the State of Missouri, has or pretends to have some claim upon the pig-iron received as aforesaid from the St. Louis Ore and Steel Company; wherefore and by reason of all of which this respondent prays to be hence dismissed with its reasonable costs.

[SEAL.] (Signed) NORTH CHICAGO ROLLING MILL CO.,
By O. W. POTTER, *Pres't.*

Attest: W. H. HANNAH, *Act'g Sec'y.*

301 STATE OF ILLINOIS, } ss:
County of Cook, }

Orrin W. Potter, being duly sworn, says he is president of the North Chicago Rolling Mill Company, the garnishee in the above-entitled cause; that he has read the foregoing answer of said garnishee and knows the contents thereof, and that the matters therein set forth are true to the best of — knowledge, information, and belief.

(Signed) O. W. POTTER.

Subscribed and sworn to before me this 23rd day of February, A. D. 1885.

[SEAL.] WM. H. McLEAN,
Notary Public.

(Endorsed:) Filed Jan'y 18, 1886. Wm. H. Bradley, clerk.

302 Afterward, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-six, came the Joliet Steel Company and Iron Mountain Company, by their solicitors, and filed in said clerk's office their limited appearance and motion to discharge rule for alleged want of proper service of process in said entitled cause; which said appearance and rule to show cause are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court Thereof.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY.

And now come the Iron Mountain Company and the Joliet Steel Company and appears in this suit for the express and sole purpose of showing cause why they should not be required to answer the intervening petition herein of the North Chicago Rolling Mill Company in conformity with the order hereinbefore entered, and they appear for no other purpose whatsoever, but expressly limit their appearance in this cause to showing cause unto said order.

And for cause why the said Iron Mountain Company and the said Joliet Steel Company should not be required to answer said petition herein the said Iron Mountain Company and the said Joliet Steel Company, respondents to said petition, set forth that they are not parties nor is either of them a party to the said suit of Olyphant against The St. Louis Ore and Steel Company, and this court
303 has never acquired any jurisdiction over them or either of them in said suit and now has no jurisdiction over them nor either of them, and they insist and each of them insist that this court has no right, at least without service of an original summons in said suit, to proceed upon said petition as against them or either of them and cannot acquire jurisdiction by the service of an order to show cause.

Wherefore the said Iron Mountain Company and the said Joliet Steel Company pray that the order to show cause may be discharged, and that these respondents may not be required to answer said petition in this cause.

IRON MOUNTAIN CO. AND
JOLIET STEEL CO.,
By ISHAM & LINCOLN,
Their Solicitors.

(Endorsed:) Filed Jan'y 25, 1886. Wm. H. Bradley, clerk.

304 On the same day, to wit, on the twenty-fifth day of January, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et. al.* } In Chancery.

Now come the Iron Mountain Company and the Joliet Steel Company for the purpose of showing cause why they should not be re-

quired to answer the intervening petition of the North Chicago Rolling Mill Company filed in this cause, and the court thereupon orders that said Iron Mountain Company and said Joliet Steel Company answer said intervening petition without prejudice to their right to raise the same objections to jurisdiction by their answer to said intervening petition as appear in their answer this day filed to the order to show cause.

Afterward, to wit, on the 1st of February, 1886, came the St. Louis Ore & Steel Company & Ethan A. Hitchcock, receiver, by their solicitors, and filed in said clerk's office their demurrer to the petition of the North Chicago Rolling Mill Company in said entitled cause; which said demurrer is in the words and figures following, to wit:

305 *Demurrer.*

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery.

The demurrer of the St. Louis Ore & Steel Company and Ethan A. Hitchcock, receiver of said company, to the petition of the North Chicago Rolling Mill Company filed in the above-entitled cause.

These respondents, by protestation, not confessing or acknowledging all or any of the matters and things in said petition contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said petition, and for cause of demurrer show that the said petitioner hath not in and by its said petition made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against these respondents.

Wherefore, and for divers other good causes of demurrer appearing in the said petition, these respondents do demur thereto and demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said
306 petition, and pray to be hence dismissed with their costs.

HUTCHINSON & LUFF,
Solicitors for said Respondents.

I certify that, in my opinion, the above demurrer is well founded in point of law.

O. K. A. HUTCHINSON,
Counsel for Respondents.

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Ethan A. Hitchcock, being duly sworn, says he is one of the respondents in the above-entitled cause, and that the above demurrer is not interposed for delay.

E. A. HITCHCOCK.

Subscribed and sworn to before me this 30th day of January, 1886.

[SEAL.] C. C. LOGAN,
Notary Public.

My term expires June 28, 1889.

(Endorsed:) Filed Feb'y 1, 1886. Wm. H. Bradley, clerk.

307 Afterward, to wit, on the third day of February, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of the intervening petitioner, North Chicago Rolling Mill Company, by George Willard, Esq., it is ordered that a subpœna issue herein to the Joliet Steel Company and the Iron Mountain Company, returnable to the first Monday of March next, to answer the petition of said intervening petitioner.

Afterward, to wit, on the fifth day of February, 1886, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

308 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

The United States of America to Joliet Steel Company and the Iron Mountain Company, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first

Monday in the month of March next to answer the intervening petition of the North Chicago Rolling Mill Company in the case of Robert M. Olyphant *vs.* The St. Louis Ore and Steel Company *et al.* heretofore filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chi-
[SEAL.] cago aforesaid, this 5th day of February, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 110th year.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the said intervening petition will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

309 I have served the within writ within my district in the following manner, to wit:

Upon the Iron Mountain Company, therein named, on the 6th day of February, A. D. 1886, by delivering a true copy thereof to Robert T. Lincoln, of the firm of Isham & Lincoln, attorneys for said company; also upon the Joliet Steel Company, therein named, on the 6th day of February, A. D. 1886, by delivering a true copy thereof to J. C. Stirling, secretary of said company.

I did not serve the president of the aforesaid companies, having been unable to find either of them within my district.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

Marshal's Fees.

2 services	$4 00
2 copies	1 00
Miles	15
Return	10
	$5 25

Endorsed: Filed February 12, A. D. 1886. Wm. H. Bradley, clerk.

On the same day, to wit, on the fifth day of March, 1886, came the Iron Mountain Company and the Joliet Steel Company, by their

solicitors, and filed in said clerk's office their objections to the jurisdiction of the court in said entitled cause; which said objections are in the words and figures following, to wit:

310 In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS IRON AND STEEL COMPANY.
} In Chancery. Gen. No., 19241.

In the matter of the intervening petition of The North Chicago Rolling Mill Company, filed herein on the eighteenth day of January, A. D. 1886, against The Iron Mountain Company, The St. Louis Ore and Steel Company, *et al.*

Now come the said Iron Mountain Company, a corporation, etc., of the State of Missouri, and the Joliet Steel Company, a corporation, etc., of the State of Illinois, and enter their qualified appearance to said intervening petition for the purpose of objecting to the jurisdiction of the court over them or either of them in this cause in respect to the subject-matter of said intervening petition,
311 and they expressly say that they do not enter their appearance for any other purpose whatever.

The said respondents thereupon say that it appears from the said intervening petition, and from the records of this court, to which reference is made, that the said petitioner is endeavoring by its petition to have a judgment at law set aside and annulled, and is endeavoring to obtain other relief, all of which is entirely disconnected from the general nature and scope and object of the main cause in which said petition is filed; and respondents say that such relief ought not to be granted upon an intervening petition, and this court ought not, upon an intervening petition filed against these respondents who were not parties to the original bill, to undertake to adjudicate upon the matters set forth in said intervening petition, but that said petitioner must file an original bill.

And the said respondent, The Iron Mountain Company, further objects to the jurisdiction of the court over it in respect to said intervening petition, because it says that it was not properly served with process to appear in this cause but, as will appear by the return of the marshal upon the process heretofore issued upon said intervening petition and attempted to be served upon it, the said Iron Mountain Company, that service of such process was made upon Robert T. Lincoln, as a member of the law firm of Isham & Lincoln; and the said respondent says that the said Robert T. Lincoln is not now and never has been the agent of the said respondent in any manner whatever in respect to the service of process, or in respect to the transaction of its business affairs; and that the only connection which the said law firm of Isham & Lincoln has ever had with the said respondent is as attorneys

for said respondent in a suit brought by the said respondent
312 against the St. Louis Ore and Steel Company, wherein the said respondent recovered judgment against the said St. Louis Ore and Steel Company, on the first day of February, A. D. 1886, for a large sum, to wit: the sum of $21,562.63 and costs of suit; which said judgment remains fully unsatisfied. And respondent says that said suit was a suit begun by attachment, and that the said North Chicago Rolling Mill Company was served as garnishee therein, and issues were duly formed upon the answer of the said North Chicago Rolling Mill Company, as garnishee, filed in said suit; and the said respondent says that before the entry of the said judgment the said North Chicago Rolling Mill Company, garnishee, made application to the said superior court of Cook county to stay proceedings in said cause in respect to it, as such garnishee for reasons stated to said court, and thereupon the said superior court of Cook county ordered that all proceedings in said cause as to the said North Chicago Rolling Mill Company, garnishee therein, be stayed until the further order of the said superior court of Cook county. And the said respondent says that the said firm of Isham & Lincoln have not been attorneys for said respondent in any other suit connected in any manner whatever with the subject-matter of said intervening petition (except in respect hereof), and said respondent insists that the employment by it of said firm of Isham & Lincoln in the said superior court of Cook county in no manner constitutes the said firm its agent for the service of process in this cause, and that service of process issued upon the intervening petition in this cause, made on the sixth day of February, A. D. 1886, upon the said law firm of Isham & Lincoln, or upon the said Rob-
313 ert T. Lincoln, is of no effect as against the said defendant, and the said defendant therefore prays this court to quash said service as against it, the said defendant.

And said respondents thereupon pray this court to direct that said intervening petition be dismissed as to each of the said respondents, and that they may go hence with their costs and charges in this behalf most wrongfully sustained.

THE IRON MOUNTAIN COMPANY AND
THE JOLIET STEEL COMPANY,
By ISHAM & LINCOLN,
Their Solicitors in This Behalf.

(Endorsed:) Filed M'ch 5, 1886. Wm. H. Bradley, clerk.

314 Afterward, to wit, on the first day of May, in the adjourned March term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of Messrs. Isham and Lincoln, leave is hereby given the Joliet Steel Company to file an intervening petition herein, which is done.

On the same day, to wit, on the first day of May, 1886, came the Joliet Steel Company, by its solicitors, and filed in said clerk's office its petition in said entitled cause; which said petition is in the words and figures following, to wit:

315 STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

The Petition of the Joliet Steel Company, a Judgment Creditor of said Defendant.

To the honorable judges of said court:

The Joliet Steel Company respectfully presents to your honors this its petition on behalf of itself and of the Iron Mountain Company hereinafter mentioned, and thereupon it respectfully sets forth that it is a corporation organized and existing and doing business under the laws of the State of Illinois, and that the said Iron Mountain Company is a corporation organized and existing and doing business under the laws of the State of Missouri; that the said defendant, The St. Louis Ore & Steel Company, is also a corporation organized and existing and heretofore doing business under the laws of the State of Missouri; that on the 21st day of July, A. D. 1884, petitioner and said Iron Mountain Company commenced in the superior court of Cook county, returnable to the same term thereof, their three separate attachment suits against the said defendant, the said defendant having given indications that it was very seriously embarrassed financially, if not actually insolvent; that one of the said attachment suits was commenced on behalf of the said
316 Iron Mountain Company and the other two were commenced on behalf of petitioner; that thereafter said defendant removed into this court, to the law side thereof, two of the suits brought against it by petitioner; that such proceedings were subsequently had in said suits that judgments were rendered in each

of them against the said defendants as follows, namely: In favor of petitioner on January 7th last, in this court, for $8,466.64; in favor of said Iron Mountain Company on February 1st last, in said superior court of Cook county, for $21,562.63, and in favor of petitioner on February 5th last for $10,051.78; that executions were issued upon each of said judgments against said defendant and were delivered to the marshal and to the sheriff, respectively, by whom they were subsequently returned wholly unsatisfied, no property of said defendant having been found upon which to levy any one of said executions; that at the present time all three of said judgments are in force unappealed from, unappealable, and wholly unpaid; that when said attachment suits were commenced no property of said defendant could be found upon which to levy the attachment writs issued therein, and said writs were thereafter served upon the Merchants' Loan & Trust Company, the North Chicago Rolling Mill Company, and Robert E. Jenkins, assignee, as garnishees. on the day when said suits were commenced; that subsequently the garnishment proceedings in said suit were dropped as to the said Merchants' Loan & Trust Company, the counsel of petitioner and of said Iron Mountain Company having become satisfied that the said Merchants' Loan & Trust Company was not indebted to the said defendant and had no property of said
317 defendant in its possession; that in one of the attachment suits pending in this court the garnishment proceeding as to the North Chicago Rolling Mill Company was dismissed upon motion of plaintiff, this petitioner; that in the other of said attachment suits pending in this court judgment was ultimately recovered against the said North Chicago Rolling Mill Company and in favor of said defendant for the use of petitioner and others entitled to share therein, which said last-mentioned judgment was rendered on the 13th day of January last, and was for the sum of $16,473.28; that said judgment, if not set aside in equity, as is now being vigorously attempted, and if paid in full, will extinguish about two-fifths of the amount of the three said judgments recovered by petitioner and by the said Iron Mountain Company against the said defendant, The St. Louis Ore & Steel Company; that execution upon the said judgments against the said garnishee has been temporarily stayed by order of court, but a motion has been made to vacate the order staying the said execution; that although said judgment was recovered in a garnishment proceeding in the suit in which petitioner was plaintiff, yet, under the laws of the State of Illinois relating to attachments, the said Iron Mountain Company is entitled to share in any amount recovered upon said judgment and to have a voice in the control of said judgment; that the said Robert E. Jenkins was garnisheed as assignee of the estate of one Robert M. Cherrie, who, on or about the 3d day of July last, made a voluntary assignment of all his property to the said Jenkins for the payment of his creditors; that at the time of said assignment said Cherrie was indebted to said defendant in a very large sum, which was at least the sum of
318 about $45,000, and is claimed in the original bill of complaint

in this cause filed by said Olyphant to have been a very much larger sum, as by reference to said bill of complaint will appear; that the said Robert E. Jenkins, as garnishee, was dismissed upon the motion of petitioner, plaintiff therein, from one of the attachment suits pending in this cause; that in the other of said attachment suits in this court in which petitioner was the plaintiff a special verdict was had upon the issues formed upon the answer of the said Robert E. Jenkins, garnishee, subject to the opinion of the court upon the question whether the said Jenkins, assignee, should be held liable to garnishment in said attachment suit; that thereafter an opinion giving the decision of the court upon said question was rendered by his honor Judge Dyer, holding said court, to the effect that said Jenkins could not be held liable as garnishee because he was to be considered as an officer of the county court of Cook county, a copy of which said opinion is hereto attached, marked "Exhibit A," and made a part hereof; that said Jenkins was thereafter discharged as garnishee in said suit by order of court made on or about the 22d day of April, A. D. 1886, but entered of record as if made on the 5th day of February, A. D. 1886; that on the 29th day of April, A. D. 1886, petitioner entered in said suit its motion to vacate and set aside the order and judgment discharging the said Jenkins as garnishee, which said motion was by order of court allowed to be entered and was continued for future consideration, and that the garnishment proceeding against said Jenkins as assignee in said superior court of Cook county in the attachment suit
319 brought by the said Iron Mountain Company against the said defendant is still pending and undetermined.

Petitioner further shows unto your honors that subsequent to the assignment of his estate by said Robert M. Cherrie it was apparently believed by the assignee that the said estate would pay at least 50 cents upon a dollar of the indebtedness of the said Cherrie, and said assignee has so stated; that neither the said petitioner nor said Iron Mountain Company was at the time of said assignment or at the time of the institution of said judgment suits a creditor of said Cherrie, nor had either of them any claim or lien upon his estate in respect of the demands upon which said attachment suits were brought, and neither of them was therefore enabled to go into the county court of Cook county, which had control of said estate, and invoke the assistance of said court in the premises for the collection of its debts against the said defendant; that petitioner and said Iron Mountain Company were then creditors at large of said defendant and had the assignment of said Cherrie not been made they would have been enabled to have collected their claims promptly and readily through the garnishment of said Cherrie; that the said assignment deprived them for the time being of any means of obtaining payment through garnishment of said Cherrie and of any means of obtaining any portion of his property through the subjection of his property to the payment of the debt of their debtor, said defendant, unless they might by garnishment proceedings establish their demand against the assignee; that there appeared to be no other way of fully enforcing their demands

against the said defendant than through garnishment of
320 said assignee to obtain, by means of garnishment proceedings and such supplemental proceedings as might be necessary, the proportion of said Cherrie's estate which might be due said St. Louis Ore & Steel Company; that they looked upon the proof of a claim against an insolvent's estate as a proceeding of the same character as would be a proof of a claim against a decedent's estate—that is to say, as a "suit" of which the circuit court of Cook county or the superior court of Cook county might take jurisdiction; that therefore in said attachment suits said assignee was garnisheed in order that petitioner and said Iron Mountain Company might prove and establish the claim of said defendant against said estate as of the date of the commencement of the said attachment suits, and might control the said claim when established, and might have the same applied to the payment of the claims of petitioner and said Iron Mountain Company against the said defendant, that petitioner and said Iron Mountain Company garnished said assignee with the understanding that in so doing they were bringing suit in behalf of the said defendant for the use of themselves as attachment plaintiffs and against the said garnishee in precisely the same way as suit may, under the constitution and laws of the State of Illinois, be maintained against an administrator merely to establish a claim against the estate to be paid "in due course of administration," and that petitioner and said Iron Mountain Company intended and expected, upon the recovery of judgment in behalf of said defend-
ant, but for their use against the said Jenkins, garnishee, to go
321 into said county court with their petitions setting forth their proceedings, and asking said court to direct said assignee to pay said judgment in due course of administration of the estate in his hands.

Petitioner further shows unto your honors that said assignee on or about the 17th day of November, 1884, filed a report in the county court of Cook county in and by which he reported to said county court certain claims proved up against the estate of said Cherrie in his hands; that, among other things, he reported a proof on the 25th day of September, A. D. 1884, by one Ethan A. Hitchcock, claiming to be receiver of the St. Louis Ore & Steel Company, of two claims amounting to $42,523.98, to which claims no objection was made by said assignee nor by any one else so far as known to petitioner, and said claims probably became thereby allowed as against said estate. Said assignee also reported a proof on the 25th day of September, A. D. 1884, by said Ethan A. Hitchcock, as such receiver of the St. Louis Ore & Steel Company, of a claim for damages growing out of a breach by said Cherrie of a certain contract to the amount of $33,489.12, to which last-mentioned claim said assignee objected and the claim was disallowed by the court, and said Ethan A. Hitchcock appealed from the order of said county court disallowing said claim to the circuit court of Cook county; that in said report by a memorandum thereof said assignee called the attention of said county court to said attachment and garnishment proceedings in said court; said assignee set forth that he refrained from express-

ing any opinion as to whether the said Ethan A. Hitchcock as receiver was or was not a proper party to make proof of the said claims hereinbefore referred to and in said report
322 mentioned against said estate; that subsequently, on the 12th day of February, A. D. 1886, the said Robert M. Cherrie presented to the said county court a petition praying the discontinuance of said assignment proceedings pending therein, and that the said assignee be directed by order of said court to convey all the property and assets in his hands belonging to the said estate to one George S. Frink, of Millerton, in the State of New York; that said petition was accompanied by what purported to be the consent in writing of a majority in number and amount of the creditors of said Cherrie to the discontinuance of said assignment proceedings; that under the statute of the State of Illinois, as by reference thereto will appear, the same being hereby expressly referred to, the said county court is authorized, upon consent of any debtor who has made an assignment and of a majority of his creditors in number and amount, to order the discontinuance of assignment proceedings pending therein, upon which discontinuance it is provided by said statute that in such case of discontinuance "all parties shall be remitted to the same rights and duties existing at the time of the assignment, except so far as such estate shall already have or been administered and disposed of;" that no notice of the presentation of said petition appears by the record in said county court to have been given by any person interested in said estate, and petitioner does not know of any person interested in said estate who received notice thereof, and therefore charges that no notice whatever was given to creditors or others of the presentation of said petition; that by its garnishment proceeding against said assignee and by the said report of said assignee and the said memorandum on said
323 report the said petitioner and the said Iron Mountain Company had acquired an equitable interest in said estate and the equitable right to be consulted in respect thereto, and the said county court had notice thereof and should in equity have considered the equitable claims and rights of petitioner and of said Iron Mountain Company; that said county court of Cook county forthwith, on said 12th day of February, A. D. 1886, entered an order granting the prayer of said petition and directing that said order should become absolute unless objection thereto should be made by anybody on or before the 17th day of February thereafter, but without directing that any notice whatever should be given to any person interested in the subject-matter of said petition; that neither said petitioner nor said Iron Mountain Company had any notice or knowledge of said petition or of said order in any way whatever, and therefore made no objection to said order, nor was objection made by any one else so far as known to petitioner, and that on said 17th day of February, A. D. 1886, said county court made a further order or orders by which it made absolute the said order of the 12th day of February, and directed the property and effects held by said assignee to be turned over to the said George S. Frink, and, after reciting that said property had been turned over and that said as-

signee had taken a receipt therefor, directed the discharge of said Jenkins as assignee, and discharged said Jenkins and released the bond given by said Jenkins as assignee and the sureties thereon from all liability in respect to said assignment proceedings.

324 Petitioner further shows unto your honors that the said defendant, The St. Louis Ore & Steel Company, is an insolvent corporation of another State; that it has no property of any kind liable to execution in this State or elsewhere so far as known to petitioner; that on or about the said 21st day of July, A. D. 1884, a receiver of all the property and effects of said defendant was appointed in the circuit court of the United States for the eastern district of Missouri; that subsequently and on the 29th day of September, A. D. 1884, the bill of complaint in this cause was filed and Ethan A. Hitchcock was appointed receiver of all the property and effects of said defendant corporation in this State, the said Hitchcock being the same person theretofore appointed receiver in said circuit court of the United States for the eastern district of Missouri; that in and by the order of appointment of said Hitchcock this court reserved the question of the giving of a bond by the said receiver and the right to require bond from the said receiver thereafter; that on the 25th day of September, A. D. 1884, when said Hitchcock, as receiver, made proof before said assignee of the said claims against the estate of said Cherrie, the said Hitchcock was only receiver under the order of a court of another jurisdiction and had not then been appointed receiver by this court nor had the bill of complaint in this cause then been filed; that said receiver, under his appointment in this jurisdiction, should have made efforts to collect the debt due from said Cherrie or from his estate either to said defendant or to him as receiver, and, if successful, should have held any money or

325 other property collected by him in trust to be paid to the parties entitled thereto, or should have paid the same into this court; that said receiver should now proceed to collect said claims from said Cherrie or said Frink forthwith; that said receiver should not be allowed under any pretense whatever to remove from the jurisdiction of this court any money or other property or any choses in action which he may be able to reduce to possession, but that all money or property obtained by him, all choses in action reduced to possession, and all debts collected by him from any person or persons within the jurisdiction of this court should be held by him or paid into this court by him for the payment of the indebtedness of said defendant due to persons or corporations residing within the limits of the jurisdiction of this court or establishing their claims here or of judgments in this court against said defendant, The St. Louis Ore & Steel Company; that property or effects of any kind in this State should pay creditors residing within this State or coming into the courts of this State to establish their demands; that petitioner and the Iron Mountain Company are interested jointly in any sum that may be recovered from the said Cherrie or from his estate; that said Iron Mountain Company is entitled to share in any money recovered in the proceeding instituted by the Joliet Steel Company in respect of said Cherrie or of his estate, and

petitioner is entitled to share in the money recovered in any proceeding instituted by the said Iron Mountain Company in respect of said Cherrie or his estate, and that for that reason petitioner has filed this its petition on behalf of the said Iron Mount-
326 ain Company as well as on his own behalf.

Petitioner further says that it believes it to be the intention of said Cherrie, acting through said Frink, and of said Hitchcock, acting as receiver of said St. Louis Ore & Steel Company in the said eastern district of Missouri, to make a settlement of said claims against said Cherrie whereby petitioner and the said Iron Mountain Company will be deprived of all interest in and of all right to any part of the money obtained from said Cherrie or said Frink; that the Joliet Steel Company, being a corporation of this State and having a judgment in this court against said defendant, is entitled to the consideration and protection of this court; that the Iron Mountain Company, having come into a court of this State, within the limits of the jurisdiction of this court, to establish its demands, and having obtained a judgment in a court of this State, is also entitled to the consideration and protection of this court; that in such proceedings as have been heretofore had there has been more effort on the part of said Hitchcock, as receiver, to defeat the claims of said petitioner and of said Iron Mountain Company against the said estate of said Cherrie than there has been on the part of anybody else; that said receiver seems to have desired to obtain payment of said claims from the estate of said Cherrie in order that he might remove the money obtained therefrom into another jurisdiction; that petitioner believes that it and *that* the said Iron Mountain Company are entitled to have at least a full and fair hearing of all questions connected with their proceedings and
327 of the rights obtained thereby, and particularly of the rights of petitioner and of the Iron Mountain Company as compared with the rights of other creditors residing in another jurisdiction and not prosecuting their claims here; that petitioner desires to have the claims against said Cherrie collected and the money obtained therefrom held within this jurisdiction until fair and full hearing and determination of the rights of petitioner and of said Iron Mountain Company can be had; that it desires to have the transactions of said Cherrie and of said Jenkins and of said Frink and of said receiver fully investigated, and that it desires that said receiver may be forthwith ordered to give a suitable bond, with sufficient securities, for the proper performance of his duties as receiver of this court; that it desires to have said receiver, as an officer of this court, directed to pursue said claims against said estate for the benefit of parties entitled to share in the proceeds thereof, and to bring any money obtained therefrom into this court, or that said petitioner or said Iron Mountain Company, or both, may be given leave to make the said receiver party to a creditor's bill, to be instituted upon said judgments or upon any one of them, and that upon the institution of said creditor's suit the said receiver may be directed to appear and to answer therein, and that this court may make any other orders or take any other action which may be necessary to

procure the rights of petitioner and of said Iron Mountain Company, not only in respect to obtaining full and fair hearing and adjudication upon their claims against the said Cherrie and his estate, but in respect as well to the establishment and enforcement of those claims.

328 The premises considered, petitioner prays that the said receiver may be forthwith directed to execute a bond with good and sufficient security, to be approved by this court, in the penal sum of $50,000, conditioned for the faithful performance of his duties as such receiver of this court; that he may be directed to pursue and enforce against the said Cherrie or his estate, wherever and in whosoever hands it may be found, any and all claims existing against said Cherrie in favor of the St. Louis Ore & Steel Company at the time of said Cherrie's assignment, and that he may be ordered to bring and retain within the jurisdiction of this court any and all moneys received by him from any such claims or that he may be ordered to pay any such moneys into the registry of this court; that he may also be ordered to bring and retain within the jurisdiction of this court or to pay into the registry of this court any and all moneys heretofore received by him upon any of said claims against said Cherrie, such moneys to be held by said receiver or by this court subject to future determination and order of this court in respect to the claims thereon.

Or in lieu thereof that leave may be given to said petitioner or to said Iron Mountain Company to make said receiver a party to a creditor's bill to be filed in this court; that said receiver may be ordered to appear and answer said creditor's bill when the same shall have been filed, and that said receiver may be forthwith ordered to give bond as before prayed, and that in either case petitioner may have such other and further relief as the nature of the case may require and as to your honors shall seem meet.

THE JOLIET STEEL COMPANY,
By ISHAM & LINCOLN, *Its Solicitors.*

329 UNITED STATES OF AMERICA, }
Northern District of Illinois. }

STATE OF ILLINOIS, }
County of Cook, } *ss:*

William G. Beale, being duly sworn, says that he is a member of the law firm of Isham & Lincoln, attorneys for said petitioners; that he has read the above petition and knows the contents thereof; that he is familiar with the matters and things in said petition mentioned, and that the same are true.

WM. G. BEALE.

Subscribed and sworn to before me this 1st day of May, A. D. 1886.

[SEAL.] F. A. ROOT,
Notary Public.

(Endorsed:) Filed May 1, 1886. Wm. H. Bradley, clerk.

330 Afterward, to wit, on the second day of June, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of Hutchinson and Luff, leave is given Ethan A. Hitchcock, receiver herein, to file his petition praying, among other things, that the Iron Mountain Company may be restrained from prosecuting a certain suit in the superior court of Cook county, and said Iron Mountain Company is ruled to answer said petition.

On the same day, to wit, on the second day of June, 1886, came Ethan A. Hitchcock, receiver, by his solicitors, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

331 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.* }

To the honorable the judges of said court:

Your petitioner, Ethan A. Hitchcock, receiver of said St. Louis Ore & Steel Company, respectfully represents that by an order duly made and entered in a certain suit of said complainant against said defendants in the circuit court of the United States for the eastern district of Missouri, on the 21st day of July, A. D. 1884, your petitioner was appointed provisional receiver of all the property, rights, credits, and effects of said St. Louis Ore & Steel Company, and that he immediately accepted the said appointment, filed his bond, and entered upon the performance of his duties as such receiver, and that afterwards, on the 7th day of August, 1884, your petitioner was appointed and qualified as permanent receiver of said company.

That afterwards, on the 29th day of September, 1884, by an order duly entered in this cause, your petitioner was appointed receiver of all the property, rights, credits, and effects of said company in the State of Illinois; that he immediately accepted said appointment and entered upon the performance of his duties as such receiver.

That among the assets of said company were certain accounts and claims against the estate of one Robert M. Cherrie, insolvent,
332 of Chicago, amounting to about the sum of seventy-six thousand and thirteen dollars and ten cents; that said Cherrie had, on or about the 3rd day of July, 1884, made a general assignment for the benefit of his creditors to one Robert E. Jenkins; that

said Jenkins had accepted the said assignment and the same was duly filed in the county court of Cook county, in the State of Illinois.

That your petitioner as such receiver duly filed his claims against the estate of said Cherrie; that a part of said claims, amounting to forty-two thousand five hundred and twenty-three dollars and ninety-eight cents, was allowed, but a part thereof, amounting to thirty-three thousand four hundred and eighty-nine dollars and twelve cents, being for damages for the non-performance by said Cherrie of a certain contract, was disputed by said assignee and the contest over said claim was still pending at the time of the discontinuance of said proceedings in insolvency as hereinafter mentioned.

That on or about the 12th day of February, 1886, the said Cherrie obtained the consent in writing of a majority in number and amount of his creditors, and thereupon, on the motion of said Cherrie and without notice to your petitioner, the said proceedings in said county court were discontinued, and by the order of said court the said assignee turned over and delivered all the property, money, and assets of said estate in his hands to one George S. Frink, of Millerton, in the State of New York, and said assignee was thereupon discharged.

That your petitioner is informed and believes that the said assets in the hands of said assignee were sufficient to pay
333 upwards of fifty per cent. of the claims proved and allowed against said Cherrie's estate, and that said Cherrie has settled with a large number of said creditors by paying them fifty per cent of the amount of their respective claims.

That since the discontinuance of said insolvency proceedings your petitioner has had several interviews and negotiations with said Cherrie and said Frink with a view to a compromise or settlement of your petitioner's said claims against said Cherrie.

That up to this time no satisfactory proposition has been made by said Cherrie and said Frink, but said negotiation is still pending and it is possible a more satisfactory offer may be made.

That on the 24th day of May, A. D. 1886, your petitioner filed his petition in the said circuit court of the United States for the eastern district of Missouri, and thereupon an order was entered by said court authorizing your petitioner to make application to this court for instruction in respect to the aforesaid matters and in respect to such proceedings for the compromise of said claims or for the collection thereof by legal process as to this court may seem expedient, a copy of which said order is hereto annexed and made a part thereof, marked Exhibit A.

That your petitioner is advised and believes it may be necessary to bring a suit or suits against said Cherrie to collect the amount of said claims against him, and it may also be necessary to bring a suit against said Frink to recover the said assets of said Cherrie in the hands of said Frink or the value thereof.

That on or about the 29th day of April, 1886, the Iron
334 Mountain Company, a corporation organized under the laws

of the State of Missouri, a judgment creditor of said St. Louis Ore & Steel Company, commenced a suit in garnishment in the name of said St. Louis Ore & Steel Company, for the use of said Iron Mountain Company, against the said Robert M. Cherrie in the superior court of said Cook county; that process in said suit was served upon said Cherrie on the 21st day of May, 1886, and that said Cherrie has filed his answer in said suit, which is still pending.

That by virtue of the appointment of your petitioner as receiver as aforesaid all the property rights and credits of said St. Louis Ore & Steel Company in this State became and were vested in your petitioner as such receiver, and your petitioner is entitled to collect and distribute the same without interference by the said Iron Mountain Company.

That said Iron Mountain Company by the said suit seeks to collect the said debt due from said Cherrie to said St. Louis Ore & Steel Company for its own use, and, as your petitioner believes and fears, will proceed to do so and will delay and embarrass your petitioner in the collection of said debt unless restrained by the order of this honorable court; that the Mechanics' bank and the Boatman's Bank of St. Louis and the Lackawana Iron & Coal Company are large creditors of said St. Louis Ore & Steel Company as well as of said Robert M. Cherrie, and the Joliet Steel Company and the Iron Mountain Company are large creditors of said St. Louis Ore & Steel Company.

And your petitioner prays for an order authorizing him to take all necessary steps and proceedings, by suit or otherwise, in
335 Illinois and elsewhere to collect from said Robert M. Cherrie and George S. Frink all amounts due from said Cherrie or for which either said Cherrie or said Frink may be liable at law or in equity to said St. Louis Ore & Steel Company or its receiver, and also to settle or compromise said claims upon such terms as he shall think proper and as shall be concurred in by the said Mechanics' bank and the Boatmen's Bank of St. Louis, the Lackawana Iron & Coal Company, the Joliet Steel Company, and the Iron Mountain Company, creditors of said St. Louis Ore & Steel Company, all monies and securities obtained by said receiver by suit or compromise of said claims to be reported to and deposited in this court subject to the further order of the court in the premises.

And that the said Iron Mountain Company and its attorneys and solicitors may be enjoined and restrained from prosecuting the said garnishment suit against said Cherrie in said superior court of Cook county.

And that your petitioner may have such other and further instructions and orders herein as the nature of the case may require.

ETHAN A. HITCHCOCK,
Receiver of the St. Louis Ore & Steel Company,
By HUTCHINSON & LUFF,
His Solicitors.

HUTCHINSON & LUFF,
Sol'r- for Petitioner.

336 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

William M. Luff, being duly sworn, says he is one of the solicitors of the said Ethan A. Hitchcock, receiver, who resides at St. Louis, in the State of Missouri; that he has read the above petition and that the same is true.

WM. M. LUFF.

Subscribed and sworn to before me this 1st day of June, 1886.

NICHOLAS W. HACKER,
[NOTARIAL SEAL.] *Notary Public.*

EXHIBIT A.

In the Circuit Court of the United States, Eastern District of Missouri.

MAY 24TH, 1886.

R. M. OLYPHANT *et al.*
vs.
THE ST. LOUIS ORE & STEEL CO. *et al.* } No. 2394 and 2507.

On reading and filing the petition of Ethan A. Hitchcock, receiver, etc., this day presented in this behalf, and it appearing that due notice of said application has been given to the several parties to this cause, it is ordered by the court—

That the said Ethan A. Hitchcock, receiver, heretofore appointed in this cause, being also receiver appointed in the ancillary suit of Robert M. Olyphant *vs.* The St. Louis Ore & Steel Company and others, now pending in the circuit court of the United
337 States for the northern district of Illinois, is hereby remitted to the said circuit court of the United States for the northern district of Illinois for instruction and authority to act in respect of the several demands on the part of the said St. Louis Ore & Steel Company against the North Chicago Rolling Mill Company and against Robert M. Cherrie and the assigned estate of said Cherrie, heretofore in the hands of Robert E. Jenkins, assignee, and against George S. Frink, who is said to have received certain property formerly composing said assigned estate or some part thereof; and the said receiver is authorized to make application in this behalf to the said circuit court of the United States for the northern district of Illinois, in the said ancillary suit of Olyphant *vs.* The St. Louis Ore & Steel Company, pending in said court, for instruction in respect to said matters and in respect of such proceedings, whether for the compromise or settlement of said claims or for the collection thereof by legal process, as to said circuit court of the United States for the northern district of Illinois may seem expedient; and said receiver is further authorized to submit to said circuit court of the United States for the northern district of Illinois all questions which may arise touching the duty of said receiver in respect of assets belonging or which may be claimed as belonging to the St. Louis Ore &

Steel Company in said northern district of Illinois, and in respect of all demands or rights of action on behalf of said St. Louis Ore & Steel Company or which may have accrued to said receiver as
338 such in respect of any assets of said St. Louis Ore & Steel Company in said northern district, including any and all demands against any person or persons residing or found within said northern district of Illinois.

Endorsed: Filed June 2, 1886. Wm. H. Bradley, clerk.

Afterward, to wit, on the eighth day of June, 1886, came the Iron Mountain Company, by its solicitors, and filed in said clerk's office its answer to the petition of the receiver in said entitled cause; which said answer is in the words and figures following, to wit:

339 In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery.

In the matter of the petition of Ethan A. Hitchcock, receiver.

The Answer of The Iron Mountain Company, Respondent, to the Petition of said Receiver.

The said respondent, for answer to said petition or to so much or such part thereof as it is advised it is material for it to answer unto, says that it admits that the said Hitchcock was, by the circuit court of the United States for the eastern district of Missouri, on the twenty-first day of July, A. D. 1884, appointed provisional receiver of the property and effects of the said St. Louis Ore & Steel Company in said eastern district of Missouri; that he accepted said appointment, filed his bond, and entered upon the performance of his duties as such provisional receiver under the said order of appointment, a copy of which is attached to the printed bill of complaint filed by the said Olyphant in the above-entitled cause, and respondent begs leave to refer thereto with like effect as if the same were set out in its answer.

This respondent further admits that on the seventh day of August, A. D. 1884, the said Hitchcock was appointed permanent receiver of said St. Louis Ore & Steel Company under an order of said circuit court of the United States for the eastern district of
340 Missouri, a copy of which said last-mentioned order is also attached to the said Olyphant's bill of complaint in said cause, and this respondent begs leave to refer thereto with the same effect as if the said order were herein set forth in full.

This respondent further admits that the said Hitchcock was, on the twenty-ninth day of September, A. D. 1884, appointed receiver of the property and effects of the said St. Louis Ore & Steel Company in said northern district of Illinois by an order of this court made

in this cause on said day; that he accepted said appointment and that he entered upon his duties as such receiver.

This respondent believes it to be true that among the assets of said company were certain accounts and claims against the estate of Robert M. Cherrie, insolvent, of Chicago, amounting to a large sum of money—that is to say, to the sum as claimed by the said St. Louis Ore & Steel Company of about seventy-six thousand dollars, or, as admitted by said Cherrie, of about forty-three thousand dollars; and this respondent admits that said Cherrie on or about the third day of July, 1884, made a general assignment under the statutes of the State of Illinois for the benefit of his creditors to one Robert E. Jenkins; that said Jenkins accepted the said assignment and entered upon the performance of his duties as assignee thereunder under the direction of the county court of Cook county. This respondent denies that the said Hitchcock, as receiver of this court, filed his claims or any claims against the estate of said Cherrie while the
341 same was pending in the said county court of Cook county, but in reference to the allegation in that respect in the said petition contained this respondent says that on or about the twenty-fifth day of September, 1884, before the filing of the bill of complaint in this court and the appointment of said Hitchcock as receiver thereunder, the said Hitchcock, as receiver under his appointment by the circuit court of the United States for the eastern district of Missouri, presented to the said Jenkins, as assignee of the estate of said Cherrie, certain claims against the said estate on behalf of said St. Louis Ore & Steel Company; that the said assignee admitted one of said claims, amounting to forty-two thousand five hundred and twenty-three dollars and ninety-eight cents ($42,523.98), to be a vald claim against the estate of said Cherrie, but the said assignee declined to decide whether the said Hitchcock, as such receiver, was or was not the proper party to prove said claim, and in and by his report, filed on November seventeenth, 1884, expressly refrained from deciding such question and submitted the same to said county court for adjudication; that said assignee declined to allow a further claim made by said receiver for damages for the non-performance by said Cherrie of a certain contract; and afterwards said last-mentioned claim was by consent of said receiver and said assignee disallowed *pro forma* by the said county court of Cook county, and an appeal from said decision of said court disallowing the said claim was taken by said receiver to the circuit court of Cook county.

Further answering, this respondent admits that the said Cherrie subsequently obtained the consent in writing of a majority in number and amount of his creditors to a discontinuance of said
342 insolvency proceedings, and that upon his request and without notice to the petitioner the said insolvency proceedings in the said county court were discontinued, and the estate of said Cherrie, heretofore in the possession of said assignee, was turned over and delivered, by order of said court, to one George S. Frink, and said assignee was thereupon discharged. This respondent believes that the said assets in the hands of said assignee were sufficient to have paid upwards of fifty per cent. of all valid claims.

against the estate of said Cherrie; that very many creditors of said Cherrie have, since the discontinuance of said insolvency proceedings, been settled with and paid fifty per cent. of the amount of their respective claims; that negotiations have taken place between the said petitioner and said Cherrie and said Frink with a view to the settlement of the said claims of the said St. Louis Ore & Steel Company against said Cherrie, and this respondent is advised that said Cherrie is willing to pay and has offered to pay to the parties entitled to receive the same fifty per cent. of the amount of the said indebtedness admitted to have been originally due to the St. Louis Ore & Steel Company, the said fifty per cent. to be paid in pig-iron, and a reasonable time to be given said Cherrie in which to make said payment. Beyond such negotiations, respondent is aware of no efforts of said receiver to collect said indebtedness from said Cherrie, but respondent believes a settlement should be made of said indebtedness, if practicable.

This respondent believes it to be true that application was, by the said Hitchcock, as receiver under the order of the circuit
343 court of the United States for the eastern district of Missouri, made to said court on or about the twenty-fourth day of May, A. D. 1886, and that thereupon an order was entered by said court, substantially as set forth in the paper marked Exhibit "A," attached to said petition; but for greater certainty this respondent begs leave to refer to a certified copy of said order when the same shall have been produced and submitted to this court herewith.

Further answering, the said respondent says that on the said twenty-first day of June, A. D. 1884, this respondent commenced, in the superior court of Cook county, an attachment suit against the said St. Louis Ore & Steel Company, in which said attachment suit the said Robert E. Jenkins, assignee of the estate of Robert M. Cherrie, was summoned as garnishee; that thereafter such proceedings were had in said superior court of Cook county that upon the first day of February, A. D. 1886, a judgment was rendered in said suit in favor of said Iron Mountain Company and against the said St. Louis Ore & Steel Company for the sum of twenty-one thousand five hundred and sixty-two dollars and sixty-three cents ($21,562.63); that issues were formed upon the answer of the said Robert E. Jenkins, assignee, summoned as garnishee as aforesaid, and the same stood for trial in the said superior court of Cook county; but after the entry of the said judgment the trial of the issues founded upon said answer was passed, temporarily, owing to engagements of counsel, and no trial thereof has as yet been had.

This respondent further says that at the same time that the said attachment suit was commenced by the respondent against
344 the said St. Louis Ore & Steel Company two other attachment suits were instituted by the Joliet Steel Company, a corporation organized and existing under the laws of the State of Illinois, against the said St. Louis Ore & Steel Company, which said suits were also commenced in the said superior court of Cook county, but were afterwards removed by the defendant into this court, where such proceedings were had that judgments were rendered

in favor of the plaintiff in said suits and against the said St. Louis Ore & Steel Company for amounts of about eight thousand ($8,000) and ten thousand dollars ($10,000) respectively; that under the statutes of the State of Illinois the said Joliet Steel Company would have been entitled to its *pro rata* share of any sum recovered from the said Jenkins as garnishee, and the said Joliet Steel Company is therefore interested in the matter of said garnishment proceeding against said assignee.

This respondent further says that after the discontinuance of the insolvency proceedings in the said county court of Cook county, as in said petition set forth, this respondent caused a garnishment writ to be issued for the said Robert M. Cherrie upon its said judgment in the said superior court of Cook county; that said writ was issued on the twenty-ninth day of April, 1886, and was served on said Cherrie on the twenty-first day of May, 1886; that subsequently interrogatories to the said garnishee were filed in the said garnishment proceeding, and afterward the said Cherrie, as garnishee, answered said interrogatories admitting an indebtedness to the said St. Louis Ore & Steel Company in the sum of forty-two thousand five hundred and twenty-three dollars and ninety-eight
345 cents ($42,523.98), and suggesting to the court that he was advised that the receiver of the St. Louis Ore & Steel Company claimed to be entitled to receive the payment of said indebtedness, and respondent says that it is advised that the said Joliet Steel Company also instituted proceedings against said Cherrie upon its judgment recovered in this court, and that similar proceedings were had in said garnishment proceedings and upon similar dates as in the case of the garnishment proceedings instituted by this respondent.

This respondent says that the said Hitchcock, as receiver, under the order of this court, ought long ago to have taken steps to collect from said Cherrie the amount of said indebtedness if the said receiver believed himself entitled to collect the same.

This respondent denies that it is necessary for the said receiver to bring suit against said Cherrie at this time for the collection of said claims if said receiver considers himself entitled to the collection of the same, but this respondent says that under the statues of the State of Illinois the said Hitchcock, as receiver in this court, is entitled to intervene in the said garnishment proceedings and interpose his claim therein to be paid the whole of said sum admitted by said Cherrie in said garnishment proceedings to be due from him, and perhaps to prosecute the claim for damages above mentioned.

Further answering, this respondent says that the Joliet Steel Company, a corporation of the State of Illinois, and this respondent are the only creditors of the said St. Louis Ore & Steel Company who have claimed to be such or who have proved or established their debts against the said St. Louis Ore & Steel Company within the said northern district of Illinois, and that their claims are
346 the only claims against said St. Louis Ore & Steel Company in the State of Illinois; that this respondent, having proved

and established its claim in the court of this State, is entitled under the laws of this State to all the protection and assistance of a creditor resident within this State; that the said respondent by its proceedings against said Jenkins, instituted long before the appointment of the said Hitchcock as receiver in this court, acquired an equitable right to receive payment of the indebtedness due from said Cherrie for its own use and the use of the Joliet Steel Company; that the said proceeding against said assignee, Jenkins, has never been discontinued; that it was instituted to obtain a judgment against said Jenkins to be paid by him in due course of administration of the estate of said Cherrie; that the subsequent garnishment of the said Cherrie, after the discontinuance of the said insolvency proceedings in the said county court of Cook county, should by this court be regarded in equity as a continuation of the garnishment proceeding against the said assignee, as it was intended to be, and full effect should be given to the said garnishment of said Cherrie as such continuation of such proceeding against said assignee by which the same indebtedness was sought to be reached.

Further answering, this respondent says that no persons have appeared in this court and claimed to be creditors of the said St. Louis Ore & Steel Company; that no claims of any kind have been made in this court against said St. Louis Ore & Steel Company; that this respondent and the said Joliet Steel Company are to be treated as domestic creditors, and as such this court should
347 require that all assets of the said St. Louis Ore & Steel Company in the said northern district of Illinois, of whatever kind, should be first applied in the payment of the judgments obtained by this respondent and by the Joliet Steel Company; that the said receiver should not be allowed to collect from said Cherrie the said indebtedness and remove the same from the jurisdiction of this court for the benefit of other creditors until the judgments of this respondent and of the said Joliet Steel Company have been paid in full; and this respondent says that it has been willing and is now willing to take from said Cherrie, in company with the said Joliet Steel Company, fifty per cent. of the amount due from said Cherrie to the said St. Louis Ore & Steel Company and to satisfy its judgment against said company; and this respondent is advised that the said Joliet Steel Company, acting with this respondent, would also be willing to accept fifty per cent. of the said indebtedness due from said Cherrie and satisfy its judgment against said St. Louis Ore & Steel Company.

This respondent says that it appears by the petition of said Hitchcock and by the said "Exhibit A," attached thereto, that the said Hitchcock presents said petition to this court as receiver of a court of another jurisdiction and not as the officer of this court; and respondent further says that said receiver was by his order of appointment merely directed to collect the property, assets, and choses in action belonging to the said St. Louis Ore & Steel Company in the name of the said company, but said receiver was not by the order of appointment, nor is he by any statute, vested with the title
348 to any of the property or assets of the said St. Louis Ore &

Steel Company, and said receiver has no title, therefore, to any of the said property or assets; and respondent says that by the institution of its said attachment suit it acquired under the statutes of the State of Illinois a right to institute garnishment proceedings against said Cherrie and to prosecute said garnishment proceedings after obtaining judgment against said St. Louis Ore & Steel Company, and such right cannot be taken away or affected by the subsequent appointment of Hitchcock as receiver of said St. Louis Ore & Steel Company.

The premises considered, this respondent says that the said receiver is not entitled to have the prayer of his said petition or any part thereof granted or to have any relief from this court in respect thereto; that it does not appear that there is any necessity at present for a suit against said Cherrie on the part of the receiver of this court; that by reason of their diligence and their proceedings to that end this respondent and the said Joliet Steel Company are entitled to collect the said indebtedness from said Cherrie, and particularly are they entitled to receive the same and to have their judgments paid therewith, because they are the only creditors of the said St. Louis Ore & Steel Company entitled to be treated by this court as domestic creditors resident within this State.

And this respondent begs leave to refer to and adopt with like effect as if the same were herein set forth in full the statements of factcontained in the petition of the Joliet Steel Company filed herein on the first day of May, A. D. 1886, on its own behalf and on
349 behalf of this respondent and to make the said statements of fact a part of this answer, and respondent prays that no part of the relief prayed for by the said petition of said Hitchcock, receiver, be granted at the present time, but that the said petition may be dismissed.

And respondent will ever pray.

THE IRON MOUNTAIN COMPANY,
By ISHAM & LINCOLN, *Its Solicitors.*

Endorsed: Filed June 8, 1886. Wm. H. Bradley, clerk.

350 Afterward, to wit, on the ninth day of June, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

And now come the Joliet Steel Company and the Iron Mountain Company and present to the court their joint petition, in and by which they pray, among other things, to adopt and have taken as a part of their said petition, with some amendments specifically men-

tioned, the statements of fact contained in a petition of the said Joliet Steel Company filed herein on the first day of May, A. D. 1886, and also the answer filed yesterday of the said Iron Mountain Company, as respondent, to the petition of Ethan A. Hitchcock, receiver, filed herein on the second day of June instant; and thereupon it is ordered by the court that leave be, and the same is hereby, given to said Joliet Steel Company and said Iron Mountain Company to file their said petitions in manner and form aforesaid.

On the same day, to wit, on the ninth day of June, 1886, came the Joliet Steel Company and Iron Mountain Co., by their
351 solicitors, and filed in said clerk's office their petition in said entitled cause; which said petition is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

Petition of the Joliet Steel Company and of the Iron Mountain Company, Judgment Creditors of the St. Louis Ore & Steel Company.

To the honorable judges of said court:

The said Joliet Steel Company and the said Iron Mountain Company respectfully ask leave of this court to adopt and present as their petition to your honors the answer this day filed by the Iron Mountain Company as respondent to the petition herein filed of Ethan A. Hitchcock, receiver, the said Iron Mountain Company adopting further the statements of fact contained in the petition of the said Joliet Steel Company filed herein on the first day of May, A. D. 1886, and adopted in and by said answer, and said Joliet Steel Company and said Iron Mountain Company, petitioners, beg leave to amend said petition heretofore filed by said Joliet Steel Company, as aforesaid, by striking out therefrom all that portion of said petition which charged an intention on the part of said receiver and of Robert M. Cherrie to make settlement of the indebtedness due from said Cherrie in such manner as to deprive the said petitioners of all relief in or through the assistance of this court, said petitioners having been advised and believing since the filing of said
352 petition of said Joliet Steel Company that they were in error in their understanding that the said receiver had anything to do with the discontinuance of the said insolvency proceedings in the county court of Cook county or had any knowledge thereof until after such discontinuance, and petitioners beg leave to amend the prayer of said petition heretofore filed by said Joliet Steel Company and beg leave to pray as follows instead of as in said petition set forth—that is to say: Said petitioners pray that the said Ethan A. Hitchcock, as receiver, under the order of this court, may be forth-

with directed to file an interpleader in the garnishment proceedings instituted by petitioners against said Cherrie, as set forth in the answer hereinbefore referred to, or that in lieu thereof the said receiver may be directed to answer this petition if he shall desire so to do, and that the respective rights and claims of your petitioners and of said receiver in and to the money due from said Cherrie may be adjudicated upon and determined by this court; and they further pray that in case of such adjudication by this court the said judgments of said petitioners may be held to be preferred claims in this jurisdiction against said St. Louis Ore & Steel Company and to be entitled to be first paid out of any assets of said St. Louis Ore & Steel Company within the jurisdiction of this court; that said receiver may be directed to execute a bond, as receiver of this court, in the usual form, with good and sufficient security, for the faithful performance of his duties as such receiver, and that he may be directed to pay over to your petitioners upon their said judg-
353 ments and until the same shall have been paid any money or other property recovered within the jurisdiction of this court from any person or persons heretofore indebted to the said St. Louis Ore & Steel Company, and that your petitioners may have such other and further relief in the premises as to your honors may seem meet and equitable.

And your petitioners will ever pray.

THE JOLIET STEEL COMPANY AND
THE IRON MOUNTAIN COMPANY.
By ISHAM & LINCOLN, *Their Solicitors.*

Endorsed: Filed June 9, 1886. Wm. H. Bradley, clerk.

354 Afterward, to wit, on the fourteenth day of June, in the adjourned May term of said court, 1886, in the record of the proceedings in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes Ethan A. Hitchcock, receiver of the said St. Louis Ore and Steel Company, by his solicitors, the Joliet Steel Company and the Iron Mountain Company having been duly notified of this application, and thereupon came on to be heard the petition of said receiver filed herein on the first day of June, 1886, the petition of the Joliet Steel Company filed herein on the first day of May, 1886, and the petition of said Joliet Steel Company and the Iron Mountain Company filed herein on the ninth day of June, 1886, and the court having heard the said petitions, the answer of said Iron Mountain Company to the petition of said receiver, and the arguments of counsel, and being fully advised in the premises, it is ordered that

said receiver file in this court his bond in the penal sum of fifty thousand dollars, with surety to be approved by the court,
355 conditioned for the faithful performance of his duties as such receiver; that said receiver take all necessary steps and proceedings, by suit or otherwise, in the State of Illinois or elsewhere to collect from Robert M. Cherrie and George S. Frink all claims, demands, and sums of money due from said Cherrie or said Frink or for which either or both of them may be liable in law or equity to said St. Louis Ore and Steel Company or its receiver; and it is further ordered that the said Joliet Steel Company and said Iron Mountain Company show cause upon the opening of the court on Monday next, twenty-first instant, why they should not be restrained from prosecuting their suits commenced against Robert M. Cherrie as a garnishee of said St. Louis Ore and Steel Company in this court and the superior court of Cook county, Illinois.

356 Afterward, to wit, on the seventh day of July, in the July term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mill Company.

Now comes the said North Chicago Rolling Mill Company and come also the Joliet Steel Company and the Iron Mountain Company, by their respective solicitors, and thereupon come on to be heard the objections of said Joliet Steel Company and said Iron Mountain Company to the jurisdiction of the court over the subject-matter of the said intervening petition otherwise than by original bill, and the court, having heard arguments of counsel, doth overrule said objections; to which order of the court overruling said objections the said Joliet Steel Company and the said Iron Mountain Company thereupon duly except; and the court doth further order that said Joliet Steel Company and the said Iron Mountain Company plead, answer, or demur to said intervening petition within thirty days from the date hereof, and that until the
357 second Monday of October next, unless the court shall in the meantime make other order to the contrary, they and all other persons interested therein be restrained from issuing execution upon the judgment in said petition mentioned, with liberty to either of said parties to make application to the court at any time for vacation or extension of so much of this order as operates as an injunction in respect to such execution.

Afterward, to wit, on the eighth day of July, 1886, came the Joliet Steel Company and the Iron Mountain Company, by their solicitors, and filed in said clerk's office their demurrer to the intervening petition of the North Chicago Rolling Mill Company in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States for the Northern District of Illinois.

358 ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mill Company, filed herein on the eighteenth day of January, A. D. 1886.

The joint and several demurrer of The Joliet Steel Company and The Iron Mountain Company, respondents, to the said petition.

These respondents, by protestation, not confessing or acknowledging all or any of the matters and things in the said petition contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said petition and for cause of demurrer show that the said petitioner hath not in and by its said petition made or stated such a cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for or to any relief from or against these respondents.

Wherefore and for divers other good causes of demurrer appearing in the said petition these respondents do demand the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said petition, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JOLIET STEEL COMPANY AND
359 THE IRON MOUNTAIN COMPANY,
By ISHAM & LINCOLN.

I, William G. Beale, hereby certify that I am one of the counsel for the above-named respondents, and that in my opinion the above demurrer is well founded in law.

WM. G. BEALE.

STATE OF ILLINOIS, } ss:
County of Cook, }

William G. Beale, being duly sworn, says that he is the agent in this behalf of the Iron Mountain Company and the Joliet Steel Company, and that the above demurrer is not interposed for the purpose of delay.

WM. G. BEALE.

Subscribed and sworn to before me this 7th day of July, A. D. 1886.

P. O'NEIL BYRNE,
[SEAL.] *Notary Public.*

(Endorsed:) Filed July 8, 1886. Wm. H. Bradley, clerk.

360 Afterwards, to wit, on the twenty-fourth day of August, 1886, came E. A. Hitchcock, receiver, by his solicitors, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery.

To the honorable the judges of said court:

Your petitioner, Ethan A. Hitchcock, receiver of said St. Louis Ore & Steel Company, respectfully represents that one Robert M. Cherrie, of Chicago, in said district, is indebted to said St. Louis Ore and Steel Company in the sum of forty-two thousand five hundred and twenty-three dollars and ninety-eight cents ($42,523.98); that said Cherrie is also indebted to the Lackawanna Iron and Coal Company, upon acceptances by said Cherrie of said St. Louis Ore and Steel Company's drafts, in the sum of thirty-six thousand dollars ($36,000); to the Boatmen's Saving Bank of St. Louis, upon acceptances by said Cherrie of said St. Louis Ore and Steel Company's drafts, in the sum of seventeen thousand five hundred dollars ($17,500), and to the Mechanics' Bank of St. Louis, upon acceptances by said Cherrie of said St. Louis Ore and Steel Company's drafts, in the sum of ten thousand dollars ($10,000), and that said St.

361 Louis Ore and Steel Company has another claim against said Cherrie for damages for the non-performance of a certain contract for the sale of iron amounting, as is claimed, to the sum of ($33,489.12); that on the 3rd day of July, A. D. 1884, said Robert M. Cherrie, being insolvent, made a general assignment for the benefit of his creditors to one Robert E. Jenkins, of Chicago, in said district, which assignment was duly filed in the county court of Cook county, and said Jenkins entered upon the performance of his duties as such assignee; that your petitioner, as receiver as aforesaid, filed his claims in said county court against the estate of said Cherrie and said Lackawanna Iron and Coal Company, and the other creditors of said Cherrie above named also filed their claims in said court; that — the claims of your petitioner above mentioned, amounting to $42,523.98, 2 were allowed in said court, but the said claim for damages was contested by said assignee, and upon a trial thereof in said county court said claim was not allowed, but a *pro forma* judgment was entered in said court against said claim; that your

petitioner prayed an appeal to the supreme court of said Cook county, where said claim was pending at the time of the proceedings next hereinafter mentioned.

That on the 17th day of February, A. D. 1886, such proceedings were had in the said county court in pursuance of the statute of the State of Illinois in such case made and provided that said insolvency proceedings were discontinued, and by the order of said court the said Robert E. Jenkins turned over and delivered all the assets belonging to the estate of said Cherrie remaining in his hands to one George S. Frink, of Millerton, in the State of New York, and said assignee was thereupon discharged.

362 That the said Robert M. Cherrie, as your petitioner is informed and believes, settled with a majority in number and amount of his creditors by paying or securing to them fifty per cent. of the amount of their respective claims.

That said proceedings were discontinued without notice to your petitioner, and he has received no dividend on his said claims; that since discontinuance of said insolvency proceedings your petitioner and his counsel have been actively engaged in negotiations with said Cherrie and said Frink for a settlement or compromise of the claims of said St. Louis Ore and Steel Company and the other above-named creditors of said Cherrie against him.

That the said other creditors of said Cherrie are also creditors of said St. Louis Ore and Steel Company, said company being liable to them upon the said drafts above mentioned, accepted by said Cherrie.

That as a result of said negotiations your petitioner has made said Frink and the Pine Lake Iron Company (which company is principally owned and controlled by said Cherrie and Frink) an agreement, a copy of which is hereto annexed and made a part hereof, marked Exhibit "A."

That said agreement provides for securing and paying to your petitioner and said other creditors of said Cherrie fifty per cent. of their claims, except the said claim of said St. Louis Ore and Steel Company for damages, which it is therein agreed shall be released; that the Joliet Steel Company and the Iron Mountain Company heretofore instituted attachment suits against the said St. Louis Ore and Steel Company, in which judgments were ultimately

363 rendered; that said Robert E. Jenkins, assignee of Robert M. Cherrie, was originally summoned as garnishee in each of said suits, and after the discontinuance of said proceedings in the county court of Cook county garnishment proceedings upon said judgments were instituted against said Cherrie, as will appear by reference to petitions on file herein; that the rights, if any, obtained by the said Joliet Steel Company and the said Iron Mountain Company by reason of the said garnishment proceedings have never been determined and are in dispute; that the pendency of said proceedings is an obstacle in the proposed settlement between your petitioner and said Cherrie, the counsel of said Cherrie objecting to the carrying out of any settlement by said Cherrie with petitioner until said garnishment proceedings have been dismissed or otherwise

arranged to his satisfaction; that the contract executed between petitioner and said Cherrie and now submitted to the court for approval provides for a dismissal or a disposition of said garnishment proceedings satisfactory to said Cherrie; that the said Joliet Steel Company and the said Iron Mountain Company are willing to dismiss their said garnishment proceedings provided they can do so without prejudice to any rights or advantages they may have obtained by reason of said garnishment proceedings, leaving the questions connected with and growing out of them to be determined by this court precisely the same as if said garnishment had not been dismissed.

That no disposition of said garnishment proceedings other than the dismissal of them seems feasible under the circumstances; that the dismissal of them under the above conditions will operate practically to transfer the questions raised by them to this court,
364 and will apparently have no other effect upon the rights of the parties interested in this cause than to bring all disputed questions into this court for determination without prejudice to any rights; and your petitioner therefore believes it will be for the best interests of all parties interested in this cause that an order be entered herein reserving to the said Joliet Steel Company and to the said Iron Mountain Company, in case they shall dismiss their said garnishment proceedings as above, the same rights and advantages in this cause before this court as they would have had in said garnishment proceedings if the same had not been dismissed, your petitioner denying that said Joliet Steel Company and said Iron Mountain Company or either of them obtained any right or advantage whatever by said proceedings.

That said Cherrie is still insolvent and has, as your petitioner is informed and believes, no property in the State of Illinois subject to execution or attachment; that said Frink resides in the State of New York, and any money or property in his hands belonging to or held in trust for said Cherrie can only be reached by long and expensive litigation.

That your petitioner has been advised by his counsel and believes that the said claim for damages is a very doubtful one; that said Cherrie denies any liability on said contract and will contest the said suit for damages, and if a judgment should be ultimately recovered therein it is very doubtful if it would be collectible. Your petitioner believes it to be for the best interest of said St. Louis Ore and Steel Company and its creditors to compromise with said Cherrie upon the terms mentioned and set forth in the said agreement, and he therefore prays for an order authorizing him to make the said compromise.

365 And your petitioner will ever pray, &c.

ETHAN A. HITCHCOCK, *Receiver*,
By HUTCHINSON & LUFF,
His Solicitors.

HUTCHINSON & LUFF,
Sol'rs for Receiver.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

William M. Luff, being duly sworn, says he is one of the solicitors of the said Ethan A. Hitchcock, who resides in the State of Missouri and is now in the State of Massachusetts; that he has read the above petition by him subscribed, and that the same is true except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

WM. M. LUFF.

Subscribed and sworn to before me this 11th day of August, 1886.

[SEAL.] EDWARD S. JUDD,
Notary Public.

EXHIBIT "A."

This memorandum of agreement between Ethan A. Hitchcock, of St. Louis, Missouri, herein acting as receiver of the St. Louis Ore and Steel Company of said St. Louis of the one part, and the Pine Lake Iron Company (a corporation under the laws of the State of Illinois), and George S. Frink, of Millerton, Dutchess county, State of New York on the other part, witnesseth:

That for the purpose of compromising and settling certain claims against Robert M. Cherrie of Chicago, Illinois, heretofore doing business under the firm of Cherrie & Co., part of which claims are held by or in charge of said receiver as such and part of which are held by other parties, that is to say:

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Claims held by Ethan A. Hitchcock, receiver:	
Acceptance by Cherrie & Co., of St. Louis Ore & Steel Co.'s draft for	$15,000 00
Open account of St. Louis Ore and Steel Co. against Cherrie & Co., for ore sold, &c.	27,523 98
Claims held by La-kawanna Iron & Coal Co.:	
Acceptances by Cherrie & Co. of St. Louis Ore and Steel Co.'s drafts amounting to	36,000 00
Claims held by Boatmen's Saving- bank, St. Louis:	
Acceptances by Cherrie & Co. of St. Louis Ore and Steel Co.'s drafts for	17,500 00
Claims held by Mechanics' bank, St. Louis:	
Acceptances by Cherrie & Co. of St. Louis Ore and Steel Co.'s draft for	10,000 00
Said claims, amounting without interest to, say	$106,023 98

The said parties hereto have mutually agreed and hereby agree each with the other as follows:

The said Pine Lake Iron Company (hereinafter designated "said iron company"), in consideration of the agreements below stated

on the part of E. A. Hitchcock, receiver, agrees with him, as such receiver, for the benefit of whom it may concern:

1. That said iron company will without delay execute its sixteen negotiable promissory notes, payable to its own order at the First National Bank of Chicago, Illinois, and by said iron company endorsed in blank, the amount of said notes in all to be fifty per cent. of all the claims above mentioned, that is to say $53,012.00 in all said notes to be divided into four sets, each set to consist of
367 four notes, all dated June 1st 1886, and for the amounts and payable at the dates respectively as follows:

First set: One note for $420.34 payable at or before three months from date; one note for $6,592.77, at or before six months from date and one note for $7,018.11, at or before nine months from date, and one note for $7,230.78 at or before twelve months from date.

Second set: One note at or before three months from date for $360; one note at or before six months from date for $5,580; one note at or before nine months from date for $5,940, and one note at or before twelve months from date for $6,120.

Third set: One note at or before three months from date for $175, one note at or before six months from date for $2,712.50, one note at or before nine months from date for $2,887.50, one note at or before twelve months from date for $2,975.

Fourth set: One note at or before three months from date for $100; one note at or before six months from date for $1,550; one note at or before nine months from date for $1,650; one note at or before twelve months from date for $1,700.

Each and all of said notes to bear interest from date at six per cent. per annum.

And that said iron company, provided and whenever the settlement and compromise contemplated by this agreement shall have been approved by an order entered by the circuit court of the United States for the northern district of Illinois in the suit now pending in said court between Robert M. Olyphant, complainant, and The St. Louis Ore and Steel Company and others defendants, will within five days after such order of approval is entered deliver to
368 said Ethan A. Hitchcock, receiver in said cause, but for the benefit of the several parties respectively holding said claims against Cherrie & Co., above mentioned, sixteen promissory notes of said iron company such as above described and by it endorsed in blank.

2. That as collateral to and a further provision for the payment of its said notes said iron company agrees to consign and deliver to some responsible warehouse company in Chicago, Illinois, to be agreed upon by said receiver and said George S. Frink, or if they have not agreed thereon then such warehouse company to be named by the president or cashier of the First National Bank of Chicago, immediately upon the approval of this agreement by said United States circuit court the quantity of at least four hundred tons per month of standard quality Lake Superior charcoal pig-iron to be manufactured at said Pine Lake iron furnace, provided said iron company may deliver any pig-iron manufactured elsewhere but of

equal grade in lieu thereof. The first month's delivery of at least four hundred tons to be made during the month of August 1886, and a like quantity to be delivered to such warehouse company at its warehouse in Chicago, during each month thereafter, until all of said sixteen notes above mentioned are fully paid or are fully secured by pig-iron delivered as herein agreed for, calling the same worth $20 per ton; provided that said iron company shall not be bound to make any shipment above provided for while and so long as the navigation of the lakes is actually closed during the winter of 1886–'7 but such shipment and deliveries of pig-iron shall be resumed as above provided for, immediately upon the opening of said lake navigation in 1887; and provided further, that in case the delivery by said iron company of any part of the char-
369 coal pig-iron above mentioned shall be prevented either by a strike or strikes among its workmen or by any accident at its said furnace, in consequence of which strike or accident the manufacture of iron at said furnace shall be stopped without fault or negligence of said company during not less than five days at any one time, then the quantity of iron deliverable for the current month or for the succeeding month as said iron company may elect shall be reduced at the rate of (16) sixteen tons for every day of the period during which the manufacture of iron at said works shall have been so prevented, not being less than five (5) successive days, but said iron company shall as soon as practicable thereafter make good and deliver the quantity of iron so in default.

It is further agreed that said iron company shall and will pay as they become due respectively all freights, storage and other charges upon or payable on account of each lot of said iron and the warehouse receipts for each lot or quantity of iron delivered as aforesaid are to be issued to said iron company and by it to be endorsed in blank and deposited with the First National Bank of Chicago, as collateral security for said notes above mentioned, which notes said receiver shall also deposit for collection with said bank.

As fast as said iron is sold as hereinafter provided for said bank shall make proper entries upon said warehouse receipts and shall receive the proceeds of all sales of said iron which proceeds as fast as received by said bank it shall apply to the extent of twenty dollars ($20) for each ton of iron sold upon and towards payment of said iron company's notes above mentioned; all proceeds of said iron above $20 for each ton of iron sold said bank shall apply to the payment of any freight, storage or other charges
370 upon said iron remaining unpaid on any of said iron theretofore delivered to said warehouse company, if any, and the remainder of such proceeds to be accounted for by said bank to said iron company.

3. None of the iron so shipped shall be sold (except with the consent of the Pine Lake Iron Company) until default in the payment of one or more of such notes, but in case of such default said receiver or said First National bank may sell sufficient of said iron at current market rates to pay such overdue note with all interest thereon. But at any time said iron company may sell any portion of said

iron, provided the purchase-money therefor up to the amount of $20 per ton shall be paid to said bank to be applied on said notes.

And the said Ethan A. Hitchcock, receiver agrees that he will so far as in his power promote and assist the sale at best market rates of the pig-iron so to be delivered by said iron company as above agreed for.

And the said George S. Frink, in consideration of the conditional agreements hereinafter stated on the part of said E. A. Hitchcock, receiver and as an inducement to said Hitchcock, to enter into and sign this agreement, doth hereby expressly undertake and agree with the said E. A. Hitchcock that the said Pine Lake Iron Company shall and will fulfill the agreements on the part of said iron company hereinbefore set forth, for the execution and delivery to said receiver by said iron company of its sixteen notes aforesaid, and also for the payment by said iron company of all freights, storage and other charges upon or payable on account of the iron to be delivered by said iron company as above set forth as the same shall become payable.

And said George S. Frink, in consideration of and as a further inducement to the making and performing by said Hitch-
371 cock of the conditional agreement on his part below stated, also hereby expressly undertakes and agrees absolutely for the delivery by said Pine Lake Iron Company of the first five hundred (500) tons of pig-iron called for by the foregoing agreements, at such place and within such time and for such purposes as hereinbefore stated and that said 500 tons of iron shall be represented by a separate warehouse receipt or receipts which shall be issued endorsed and delivered to said First National Bank of Chicago, in accordance with the agreements above set forth on the part of said iron company and the proceeds of said 500 tons shall be paid and applied specifically as hereinafter provided therefor:

And the said George S. Frink, as an inducement and in consideration as aforesaid also by signing this instrument undertakes and agrees that this contract shall be forthwith executed on its part by said Pine Lake Iron Company by some duly authorized officer thereof and in default thereof said Frink hereby undertakes himself to fulfill and perform the several agreements herein set forth on the part of said Pine Lake Iron Company.

And the said Ethan A. Hitchcock, receiver, as aforesaid, in consideration of the agreements above stated and upon consideration that the compromise and settlement of said claims above mentioned which is hereby contemplated, shall be approved and authorized by the circuit court of the United States for the northern district of Illinois by an order to be entered in said suit of Olyphant *vs.* St. Louis Ore and Steel Company *et als.*, above mentioned, doth hereby as such receiver and for the benefit of the holders of said claims against Cherrie & Co., but not otherwise, agree with said Pine Lake Iron Company and with said George S. Frink as follows to wit:

372 1. That immediately upon the execution of this agreement for said Pine Lake Iron Company by some authorized officer

thereof, and by said George S. Frink, on his own behalf, said receiver will endeavor to obtain the assent thereto of the said Lackawanna Iron and Coal Company the Boatmen's saving bank, and the Mechanics' bank; and upon obtaining such assent will without delay present to said circuit court of the United States at Chicago, Illinois his petition in said suit of Olyphant *vs.* St. Louis Ore and Steel Company *et als.*, submitting to said court for its approval the settlement and compromise of said claims against Cherrie & Co., contemplated by this agreement and recommending that he be authorized as such receiver to carry out the same, it being understood and so represented by said receiver that the matter of such settlement has heretofore by proper order duly entered, been remitted to that court by the circuit court of the United States for the eastern district of Missouri, in a suit pending in said court between the same parties.

It is understood that the settlement hereby contemplated, if and when approved by said court and fully kept and performed by said iron company to wit: by the delivery and payment of all said notes at the maturity thereof respectively as above agreed for, shall release and discharge said Cherrie from all claims and demands held against him by the St. Louis Ore and Steel Company or its receiver, including the so-called damage claim amounting to $32,000 or $33,000.

2. That if, and whenever such order approving such compromise hereby contemplated shall be made in said cause by said circuit court said receiver will assign and deliver or cause to be assigned and delivered to the First National Bank of Chicago, for collection as hereby contemplated, the said several acceptances of
373 Cherrie & Co., hereinbefore mentioned and also the open account against Cherrie & Co. in favor of the St. Louis Ore and Steel Company for $27,523.98, above mentioned and will also deposit with said bank in escrow a release of all claims and demands on the part of said St. Louis Ore and Steel Company against said Robert M. Cherrie, including said damage claim, the said acceptance and account and release to be received and held by said bank for the purpose and upon the condition following that is to say:

That if, and whenever the said Pine Lake Iron Company shall have performed its several agreements hereinabove set forth and shall have fully paid at or before maturity thereof respectively its said sixteen notes, then said acceptances and open account and release shall be delivered to Robert M. Cherrie or such person as he may name therefor, such account having been receipted and such acceptances cancelled and such payment of said sixteen notes of said iron company above mentioned shall be accepted by said receiver and said Lackawanna Iron and Coal Company and said Boatmen's saving bank and Mechanics' bank respectively, in satisfaction of all of said claims against Cherrie & Co. and said Frink agrees that he will at the same time with such delivery of said acceptances and release, procure and exhibit to said receiver fully paid and cancelled & certain other acceptance by said Cherrie & Co. of the St. Louis Ore and Steel Co.'s draft for $10,000 lately held by the Merchants'

National Bank of St. Louis and will procure and deliver to said receiver a good and sufficient release to said St. Louis Ore and Steel Company from all liability on said draft.

And it is further agreed between the several parties hereto that if said sixteen notes of said iron company or any of them shall not be executed and delivered by said iron company as above agreed for, or having been so delivered shall not be fully paid at or
374 before the maturity thereof respectively, then and in such case any and all sums which have been or may be paid to said bank on account of said notes except and other than the proceeds of said first five hundred tons of iron the delivery of which the said Frink has personally undertaken for as above set forth shall be credited *pro rata* on the original and full amount of said several claims against Cherrie & Co., hereinabove mentioned as only so much paid on account thereof; but it is further expressly agreed by the several parties hereto as a special inducement to said receiver to sign these presents that the entire proceeds of said first five hundred (500) tons of pig-iron or of so much thereof as shall have been delivered as above agreed for by said iron company and said Frink shall in such case be paid to said receiver for account of said St. Louis Ore and Steel Company as and for liquidated damages for breach of this contract now fixed and agreed on by said parties and if said first 500 tons of iron or any part thereof shall not have been delivered by said iron company and warehouse receipts therefor delivered to said bank as hereinbefore provided for, then the said Frink shall and hereby personally undertakes to pay to said receiver on demand the value in money of said 500 tons of iron or of so much thereof as shall not have been so delivered to wit: at the rate and agreed value of twenty (20) dollars per ton therefor; and said acceptances and said open account and release shall be returned by said First National bank to said receiver his successors in office or assigns for account of the present holders of said existing claims against Cherrie & Co., and thereupon said receiver his successors in office or assigns and other holders of said claims shall have the right to demand and enforce payment of all amounts remaining unpaid upon said original claims against Cherrie & Company above mentioned without prejudice to
375 the right of any person holding or who shall hold said existing claims against Cherrie & Company or any of them thereafter to demand and by any lawful proceeding to collect all amounts remaining unpaid thereon and the damage claim above mentioned if found to be a valid claim against Cherrie may be enforced to the same extent as though this agreement had not been made, such claim to be subject to all existing defences thereto. It is also agreed that neither of said notes of the Pine Lake Iron Company shall be delivered to said receiver nor shall any of said iron be shipped on account of this agreement until the garnishee proceedings instituted at Chicago by the Joliet Steel Company and the Iron Mountain Company against Robert M. Cherrie as garnishee in suits instituted by said Joliet Steel Company and said Iron Mountain Company shall be dismissed or otherwise arranged to the

satisfaction of the Pine Lake Iron Company, provided that if said garnishment proceedings are not so dismissed or otherwise arranged within fifteen days after the date hereof said receiver may at his option at any time thereafter annul this agreement by notice sent by mail to said George S. Frink at Millerton, New York upon which being done neither party hereto shall be any longer bound by anything herein contained.

In witness whereof, the said Ethan A. Hitchcock, receiver as aforesaid and not otherwise, and the said Pine Lake Iron Company by the vice-president thereof duly authorized and the said George S. Frink have executed these presents under their respective hands and seals this fourth day of August, 1886.

E. A. HITCHCOCK, [SEAL.]
As Receiver.

[CORPORATE SEAL.] PINE LAKE IRON CO., [SEAL.]
By HENRY L. DOLPH, *Vice-president.*

GEORGE S. FRINK. [SEAL.]

Attest: HARRY DUVALL, *Sec'y.*

(Endorsed:) Filed Aug. 24, 1886. Wm. H. Bradley, clerk.

376 Afterward, to wit, on the thirtieth day of August, in the July term of said court, 1886, in the record of the proceedings thereof in said entitled cause, the following order was entered by direction of Hon. Walter Q. Gresham, circuit judge:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes Ethan A. Hitchcock, receiver of said St. Louis Ore and Steel Company, by Hutchinson & Luff, his solicitors, and presents to the court here his petition for an order authorizing him to compromise the claims of said St. Louis Ore and Steel Company against Robert M. Cherrie, of Chicago, upon the terms and conditions stated and set forth in a certain agreement between said receiver, the Pine Lake Iron Company, and George S. Frink, dated the fourth day of August, A. D. 1886, a copy of which agreement is attached to and made a part of said petition, the said agreement having been made and entered into subject to the approval of this court.

And it appearing to the court from said petition that the undisputed claims of the said St. Louis Ore and Steel Company against the said Robert M. Cherrie amount to the sum of forty-two thousand five hundred and twenty-three dollars and ninety-eight cents ($42,523.98); that said St. Louis Ore and Steel Company has
377 another claim against said Cherrie for damages for the nonperformance of a certain contract for the sale of iron ore, amounting to thirty-three thousand four hundred and eighty-nine

dollars and twelve cents ($33,489.12); that said last-mentioned claim is disputed by said Cherrie, who denies that he is liable for any damages upon said contract; that said receiver has been advised by counsel and believes it is doubtful if said claim for damages can be enforced or collected; that by the terms of said compromise agreement there will be secured to be paid to said receiver fifty per cent. of said sum of forty-two thousand five hundred and twenty-three dollars and ninety-eight cents ($42,523.98) in instalments at three, six, nine, and twelve months after the first day of June, 1886, with interest at six per cent. per annum from said date, the said claim for damages above mentioned to be released by said receiver;

And it further appearing to the court from said petition that the Joliet Steel Company and the Iron Mountain Company have instituted attachment suits against said St. Louis Ore and Steel Company, in which judgments were rendered in favor of said Joliet Steel Company and said Iron Mountain Company against said St. Louis Ore and Steel Company; that Robert E. Jenkins, assignee of said Robert M. Cherrie, was originally summoned as garnishee in each of said suits, and
378 that after the discontinuance of the insolvency proceedings of said Cherrie, as stated in said petition, said Cherrie was summoned as a garnishee in two of said suits; that the rights, if any, obtained by said Joliet Steel Company and said Iron Mountain Company by the said garnishment proceedings have never been determined and are in dispute; that the pendency of said proceedings is an obstacle to the proposed settlement between said receiver and said Cherrie, and that said Joliet Steel Company and said Iron Mountain Company are willing to dismiss their said garnishment proceedings provided they can do so without prejudice to any rights or advantages they may have obtained thereby, the said receiver denying that said Joliet Steel Company and said Iron Mountain Company or either of them obtained any right or advantage whatever by said proceedings; and the court having read the said petition and the agreement thereto attached and being fully advised in the premises, and it further appearing to the court that all the parties to or interested in this suit have consented to the entering of this order—

It is ordered that the said receiver be, and he is hereby, authorized to compromise and settle with the said Robert M. Cherrie upon the terms stated and set forth in the said petition and agreement, a copy of which is thereto attached, and said agreement is hereby approved and said receiver is authorized and instructed to carry
379 out and perform the same on his part, and upon full performance thereof by said Pine Lake Iron Company and said George S. Frink said receiver is authorized to release and discharge said Robert M. Cherrie from all claims and demands held against him by said St. Louis Ore and Steel Company or its receiver, including the claim for damages above mentioned and described, and to assign and deliver to the First National Bank of Chicago for collection the several acceptances of Cherrie & Co. in said agreement

mentioned and the open account of said St. Louis Ore and Steel Company against said Cherrie for twenty-seven thousand five hundred and twenty-three dollars and ninety-eight cents ($27,523.98), and also deposit with said bank in escrow a release of all claims and demands on the part of said St. Louis Ore and Steel Company against said Cherrie, including said damage claim; the said acceptances, account, and release to be received and held by said bank for the purpose and upon the conditions in said agreement set forth.

And it is further ordered that said Joliet Steel Company and said Iron Mountain Company dismiss their said garnishments of said Robert M. Cherrie and said Robert E. Jenkins, assignee, any rights or advantages they may have obtained by said garnishments as against the said St. Louis Ore and Steel Company, said receiver, or any other party, and all questions connected with or growing out of said garnishments being hereby reserved for determination
380 by this court in this cause the same as if said garnishments had not been dismissed and without prejudice to the rights of said Joliet Steel Company or said Iron Mountain Company or any other person or corporation interested herein.

381 Afterward, to wit, on the eleventh day of October, in the adjourned October term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of the solicitors for the North Chicago Rolling Mill Company, intervening petitioner, it is ordered that so much of the order entered herein July seventh, 1886, as restrained the issuing of an execution against said rolling mill company upon the judgment in said order mentioned be, and the same is hereby, extended for the period of thirty days unless the court shall in the meantime make other order to the contrary.

382 Afterward, to wit, on the second day of November, in the adjourned October term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause comes on to be heard upon the demurrer of the Joliet Steel Company and

Iron Mountain Company filed herein July eighth, 1886, to the petition of the North Chicago Rolling Mill Company, and after hearing the arguments of counsel in part further hearing thereon is hereby postponed to a future day.

383 Afterward, to wit, on the ninth day of November, in the adjourned October term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Ordered that the restraining order herein be extended thirty days.

384 Afterward, to wit, on the sixteenth day of November, in the adjourned October term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mill Company.

Now comes the Joliet Steel Company and the Iron Mountain Company, by Isham & Lincoln, their solicitors, and come also the said St. Louis Ore and Steel Company and E. A. Hitchcock, receiver, by Hutchinson & Luff, their solicitors, and the North Chicago Rolling Mill Company, by Willard & Driggs, its solicitors, and thereupon came on to be heard the demurrers respectively of the said Joliet Steel Company, the Iron Mountain Company, and the St. Louis Ore & Steel Company to the intervening petition of said North Chicago Rolling Mill Company, and the court, having heard arguments of counsel, doth order that said demurrers and each of them be, and they are hereby, overruled; and it is further ordered that said Joliet Steel Company, Iron Mountain Company, and St.
385 Louis Ore and Steel Company have until the twentieth day of December, 1886, to answer unto said petition.

And it is further ordered that said Joliet Steel Company and Iron Mountain Company and St. Louis Ore and Steel Company and all other persons interested therein be, and they are hereby, until the further order of this court, restrained and enjoined from having execution issued upon the judgment at law entered January thirteenth, 1886, against said North Chicago Rolling Mill Company as

garnishee in the suit entitled The Joliet Steel Company against The St. Louis Ore and Steel Company *et al.* and numbered 456 (term number) and 19235 (general number), in this court, and entered of record in Book 27, pages 385 and 386, of the law records of this court.

Afterward, to wit, on the seventeenth day of December, 1886, came the St. Louis Ore & Steel Company and Ethan A. Hitchcock, receiver of said company, and filed in said clerk's office their answer to the petition of the North Chicago Rolling Mill Company in said entitled cause; which said answer is in the words and figures following, to wit:

386 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } Bill.

The joint answer of the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver of said company, to the petition of the North Chicago Rolling Mill Company filed in said cause.

These respondents, saving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors and imperfections in the said petition contained, for answer thereto, or to so much and such parts thereof as these respondents are advised is or are material for them to answer, answering say, they admit that on or about the first day of December, 1883, said petitioner entered into a contract with said St. Louis Ore and Steel Company substantially as in said petition alleged.

These respondents, further answering, admit that said petitioner and said St. Louis Ore and Steel Company entered upon the performance of said contract, and that said contract was in part performed, but these respondents deny that said St. Louis Ore and Steel Company failed to pay said petitioner said sum of $21,536.56 on said 10th day of July, 1884, as in the said petition alleged, and say that said payment was waived by said petitioner.

387 These respondents, further answering, admit that said receiver undertook to substantially comply with the terms of said contract, but they deny that he failed to carry out or perform the same on the part of said St. Louis Ore and Steel Company, as in the said petition alleged, and aver that he has, ever since his appointment, been ready and willing and has offered to carry out substantially the terms of said contract, as receiver as aforesaid, under the order of the court appointing him, but said petitioner has failed and refused to perform the said contract on its part. That said petitioner refused to deliver said rails under said contract unless this respondent, Ethan A. Hitchcock, as receiver, would give his personal obligation to pay for said rails in cash on delivery.

These respondents believe that on the first day of January, 1885,

a balance of rails remained undelivered on said contract, but the amount thereof they are unable to state.

These respondents further answering, admit that in order to carry out its contracts it was necessary for said petitioner to purchase iron ore and pig metal; but these respondents deny that upon consideration that said St. Louis Ore and Steel Company had entered into the contract aforesaid, said petitioner purchased of, and said St. Louis Ore and Steel Company, upon consideration of such contract, sold to said petitioner from about the first day of December, 1883, until the tenth day of July, 1884, large quantities of pig metal, as is in the said petition alleged; and these respondents aver that the said contract and said purchases of pig metal were separate and distinct transactions.

These respondents, further answering, admit that said peti-
388 tioner, during the month of July, 1884, came into possession from said St. Louis Ore and Steel Company, of certain parcels of pig metal, as in the said petition alleged.

These respondents, further answering, deny that in consideration of the aforesaid contract for the manufacture of rails, said petitioner purchased of and said St. Louis Ore and Steel Company sold to one R. M. Cherrie a large quantity of iron ore, as is in the said petition alleged. And these respondents aver that the said contract for rails and said sale to said Cherrie were entirely separate and distinct transactions.

These respondents, further answering, admit that said Cherrie entered upon the performance of his contract with said petitioner, and continued such performance until the third day of July, 1884, when he made an assignment for the benefit of his creditors, and ceased delivering ore on said contract, as is in the said petition alleged.

They deny that said petitioner, agreed verbally with said St. Louis Ore and Steel Company to receive from it and said company agreed to deliver to said petitioner iron ore upon the same terms and conditions as contained in the said contract with said Cherrie; but say that said St. Louis Ore and Steel Company sold and delivered to said petitioner certain quantities of iron ore at about the same price as that contracted for with said Cherrie.

These respondents have no knowledge or information as to the payment of said transportation charges, and therefore can neither admit nor deny the said allegation, but require proof thereof.

These respondents, further answering, admit that certain ore delivered by said St. Louis Ore and Steel Company to said petitioner
389 did not possess the amount of metallic iron required, and that said petitioner has a first claim for said shortage amounting to $458.66, as is in the said petition alleged.

These respondents, further answering, deny that said St. Louis Ore and Steel Company made any default in the performance of said contract for steel rails on its part, and they also deny that said petitioner sustained any damage by reason of said alleged non-performance.

These respondents, further answering, admit that the Joliet Steel

Company instituted two suits at law in the superior court of Cook county against said St. Louis Ore and Steel Company, that said petitioner was summoned therein as garnishee, and that said suits were removed into this court as is in the said petition alleged.

But these respondents deny that said petitioner in said suits set forth in substance the dealings between said petitioner and said St. Louis Ore and Steel Company in respect to said rails, ore and pig metal, and that it claimed in said two causes that the account correctly stated between said petitioner and said company was as set forth in said petition.

These respondents, further answering, deny that upon the trial of the issues between said petitioners and the plaintiff in said causes, said petitioner introduced proof fully sustaining the account aforesaid, and aver that said proof did not sustain said claim or any part thereof, but they admit it was ruled in said causes that said account could not be set off in said causes, as is in the said petition alleged.

These respondents, further answering, deny that said St. Louis Ore and Steel Company made default in the performance of said rail contract in respect to the payment of moneys thereunder before the time of the service of said writs of garnishment, and that
390 in consequence of such default, damages occurred to said petitioner before the service of said writ. And they deny that subsequent to the service of said writs of garnishment the said St. Louis Ore and Steel Company made default in the performance of said rail contract, and that such defaults have continued from thence hitherto as is in the said petition alleged.

These respondents, further answering, admit that at the time of the service of said writs of garnishment said petitioner was indebted to said St. Louis Ore and Steel Company, but they deny that before the 15th day of August, 1884, a default on the part of said company had taken place which caused damage to said petitioner, and that such default and damage were increased by said company as is in the said petition alleged.

These respondents, further answering, admit that a judgment and a verdict were entered in said suits in this court, and that it is the intention of said plaintiff to proceed to judgment against said petitioner as is in the said petition alleged.

These respondents, further answering, say that this respondent Ethan A. Hitchcock was on the 21st day of July, 1884, by the circuit court of the United States for the eastern district of Missouri, and on the 29th day of September, 1884, by this court appointed receiver of all the property, rights, credits and effects of the said St. Louis Ore and Steel Company, and that he is now such receiver.

These respondents, further answering, say that in said suit of the Iron Mountain Company against said St. Louis Ore and Steel Company judgment was entered against said defendant on the first day of February, 1886, for the sum of $21,562.63 and costs, and that proceedings therein against said petitioner were stayed.

391 These respondents are informed and believe that, so far as said petitioner is concerned, said Iron Mountain Company's cause involves the same subject-matter and issues which are in-

volved and raised in said suits of the Joliet Steel Company aforesaid, as is in the said petition alleged.

These respondents deny that said petitioner has any just claim for damages or anything else against these respondents or either of them or any right to set off or recoup any claim whatever against them or either of them, either at law or in equity.

And these respondents pray to be hence dismissed with their costs.

ST. LOUIS ORE & STEEL COMPANY,
ETHAN A. HITCHCOCK, *Receiver*,
By HUTCHINSON & LUFF, *Their Solicitors.*

HUTCHINSON & LUFF,
Sol'rs for Respondents.

(Endorsed:) Filed Dec. 17, 1886. Wm. H. Bradley, clerk.

392 Afterward, to wit, on the twentieth day of December, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion of Messrs. Isham & Lincoln, the time to answer herein is hereby extended ten days.

393 Afterward, to wit, on the thirtieth day of December, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On motion, it is ordered that the time for the Joliet Steel Company to answer herein be extended twenty days.

394 Afterward, to wit, on the thirty-first day of December, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

On reading and filing the petition of Ethan A. Hitchcock, receiver of said St. Louis Ore and Steel Company, and on motion of Hutchinson & Luff, solicitors for said receiver, it is ordered that said receiver be, and he is hereby, authorized to pay the cost of the transcript of the record of this court in the suit of the Joliet Steel Company against said St. Louis Ore and Steel Company, in which a writ of error has been prosecuted in the Supreme Court of the United States to reverse the judgment therein, the said transcript to be made by the clerk of this court, to be filed in said Supreme Court.

On the same day, to wit, on the thirty-first day of December, 1886, came Ethan A. Hitchcock, receiver, by his solicitors, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

395 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL CO. *et al.* }

To the honorable the judges of said court:

Your petitioner, Ethan A. Hitchcock, receiver of said St. Louis Ore & Steel Company, respectfully shows that on the fifth day of February, A. D. 1886, in a certain suit in this court, on the common-law side thereof, the Joliet Steel Company recovered a judgment against the said St. Louis Ore & Steel Company for the sum of ten thousand and fifty-one dollars and seventy-eight cents and costs; that the said St. Louis Ore & Steel Company has prosecuted a writ of error in the Supreme Court of the United States to reverse the said judgment, and said company and your petitioner believe there are just grounds for the reversal of said judgment.

Your petitioner further shows that all the assets of the said St. Louis Ore & Steel Company in the State of Illinois are in the hands of your petitioner as such receiver, and that said company has no means to pay the costs of the transcript of the record of said suit for the Supreme Court.

Your petitioner therefore prays that he may be authorized to pay for the said transcript out of the funds in his hands as such receiver.

396 And your petitioner will ever pray, &c.

ETHAN A. HITCHCOCK, *Receiver*,
By HUTCHINSON & LUFF,
His Solicitors.

HUTCHINSON & LUFF,
Sol'rs for Pet.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Wm. M. Luff, being duly sworn, says he is one of the solicitors of the said petitioner; that he has read the above petition, and that the same is true.

WM. M. LUFF.

Subscribed and sworn to before me this 30th day of December, A. D. 1886.

ORSON H. BROOKE,
[SEAL.] *Notary Public.*

Endorsed: Filed Dec. 31, 1886. Wm. H. Bradley, clerk.

397 Afterward, to wit, on the twenty-second day of March, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now again come the parties, by their solicitors, and the court, being fully advised upon the demurrer of the Joliet Steel Company to the petition of the North Chicago Rolling Mill Company, overrules the same, without prejudice to its rights to raise the same question hereafter, by answer or otherwise.

Afterward, to wit, on the twenty-eighth day of March, 1887, came the Joliet Steel Company, by its solicitors, and filed in said clerk's office its answer to the intervening petition of the North Chicago Rolling Mill Company in said entitled cause; which said answer is in the words and figures following, to wit:

398 In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

The answer of the Joliet Steel Company, one of the respondents, to the intervening petition of the North Chicago Rolling Mill Company.

This respondent now and at all times hereafter saving and reserving to itself all and all manner of benefit or advantage of
399 exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said petition contained, for answer thereto, or to so much thereof as this

respondent is advised it is material or necessary for it to answer unto, answering says:

This respondent admits that the said petitioner is a corporation of the State of Illinois, organized and existing as in said petition alleged.

This respondent admits that on or about the first day of December, A. D. 1883, the said petitioner entered into a contract with the said St. Louis Ore and Steel Company, a corporation of the State of Missouri, for the manufacture of eighteen thousand tons of steel rails by the petitioner for the said St. Louis Ore & Steel Company, a copy of which contract is alleged to be set forth in said petition, but this respondent is not advised as to the accuracy of said copy, and it, therefore, prays leave to refer to the original thereof when produced, for greater certainty as to the contents thereof.

This respondent is advised and believes and therefore admits that the said St. Louis Ore and Steel Company and the said petitioner duly entered upon a performance of said rail contract, but whether the terms and conditions of said rail contract were substantially carried out and fulfilled by the said parties up to the tenth day of July, A. D. 1884, this respondent does not know and can neither admit or deny the allegations in that behalf in said petition contained, and it, therefore, leaves the petitioner to make such proof thereof as it may be advised, if the same shall be material.

This respondent denies that the said St. Louis Ore and Steel Company failed to pay the said petitioner on the said 10th day of
400 July, A. D. 1884, the sum of $21,536.56, or any other sum, which on said day became due and payable from it to said petitioner for rails delivered during the previous month by said petitioner to said St. Louis Ore and Steel Company, and denies that said sum or any other sum still remains unsettled between said St. Louis Ore and Steel Company and said petitioner; but on the contrary, this respondent is advised and believes and so states the fact to be, that the said St. Louis Ore and Steel Company duly and fully paid said petitioner for all rails manufactured and delivered to it by said petitioner, and that all accounts between said St. Louis Ore and Steel Company and said petitioner, growing out of the manufacture of steel rails by said petitioner for said St. Louis Ore and Steel Company were long since fully settled and paid.

This respondent is advised and believes, and therefore admits, that the said Ethan A. Hitchcock, as receiver in this cause, undertook to carry out said rail contract, and that he did not succeed in doing so further than to receive a portion, but not all, of the rails contemplated by said contract, but this respondent is not advised as to the exact quantity of rails which said receiver took from said petitioner nor as to the payments which he made therefor, and it therefore leaves petitioner to make such proof thereof as it may be advised. And this respondent denies that petitioner was ready and willing and offered to fully carry out said rail contract on its part; on the contrary, this respondent is advised and believes, and so states, that said petitioner was not ready or willing and did not offer to carry out said contract according to the terms thereof; and that

the want of success on the part of said receiver in undertaking to carry out said contract was due largely, if not wholly, to
401 improper actions and demands on the part of the said petitioner in respect to the fulfillment of said contract.

This respondent is advised and believes, and therefore admits, that at the time fixed for the final performance of said rail contract, a balance of several thousand tons of rails remained unreceived and unpaid for under said rail contract or otherwise, and that the same still remains unreceived and unpaid for, but as to the exact amount of said balance of rails this respondent is not informed, and therefore leaves the said petitioner to make such proof thereof as it is advised. But this respondent says that it is advised and believes, and so states the fact to be, that no portions of the said balance of rails was ever offered to be delivered by said petitioner to said St. Louis Ore & Steel Company, nor even manufactured by said petitioner, and said petitioner was neither willing nor ready to deliver any portion thereof.

This respondent is advised and believes, and therefore admits, that it was necessary for the said petitioner, to enable it to carry out the said rail contract with the said St. Louis Ore & Steel Company, and other contracts of a like nature, to provide for and obtain large quantities of iron ore and pig metal; and that the said petitioner from time to time purchased from the said St. Louis Ore & Steel Company large quantities of pig metal, but this respondent is not advised as to the prices per ton at which said pig metal was to be paid for, nor as to the number of pounds which it may have been agreed between said petitioner and said St. Louis Ore & Steel Company should be treated as a ton of said pig metal, nor as to the time or mode of payment agreed upon in respect to said pig metal, and it therefore leaves the said petitioner to make such proof of
402 all such matters as it may be advised, if the same shall be material; but this respondent denies that there was any substantial connection between the said rail contract and the said purchase of pig metal, or that in any sense the said rail contract furnished the consideration for the purchase and sale of said pig metal. This respondent is advised and believes, and so states, that the said petitioner made purchases of pig metal from the said St. Louis Ore & Steel Company from the first day of December, A. D. 1883, and even from a time prior to said date, down to the time when a receiver of the said St. Louis Ore & Steel Company was appointed in St. Louis, as hereinafter stated, and that such purchases were made without reference to said rail contract and solely because said petitioner believed it for its interest to make such purchases. This respondent is advised and believes, and so states, that the quantity of rails contemplated by said contract to be manufactured by said petitioner for said St. Louis Ore & Steel Company was really but an insignificant proportion of the quantity of rails which said petitioner was able to manufacture at its rolling mills, and that the rails which it did actually furnish to said St. Louis Ore & Steel Company while said rail contract was being performed, were but a small part of the rails actually manufactured at its rolling mills, and that the pig

metal so purchased by said petitioner from said St. Louis Ore & Steel Company was purchased for the purpose of being used in the manufacture of rails generally by said petitioner, and not for the purpose of being used solely and exclusively for the rails manufactured by said St. Louis Ore & Steel Company; and this respondent is advised and believes that such purchase of pig metal by said petitioner had no special reference to said rail contract, and no other reference at all, than possibly in the minds and motives of the purchaser.

403 This respondent is not informed as to the exact quantity of pig metal obtained by said petitioner from said St. Louis Ore & Steel Company, and it therefore leaves the said petitioner to make such proof thereof as it may be advised, if the same shall be material.

This respondent is advised and believes, and therefore admits that the said St. Louis Ore & Steel Company sold to one R. M. Cherrie doing business under the firm name of R. M. Cherrie & Company, a large quantity of iron ore from its mines at Pilot Knob in the State of Missouri; but it is not advised and does not believe, and therefore denies that such sale was made in consideration of the said rail contract, or that it had any connection with said rail contract, or any reference thereto whatever. This respondent is advised and believes, and therefore admits that a contract was made between the said Cherrie and the said St. Louis Ore & Steel Company, but whether the pretended copy set out in said petition is a correct copy or not, this respondent is not advised, and it therefore, for greater certainty, begs leave to refer for the contents of said ore contract to the original thereof when produced, if the same shall be material.

This respondent is advised and believes, and therefore admits that the said St. Louis Ore and Steel Company and said Cherrie entered upon the performance of the said ore contract and continued such performance until the third day of July, A. D. 1884, when the said Cherrie made a voluntary assignment under the laws of the State of Illinois to one, Robert E. Jenkins, for the benefit of the creditors of said Cherrie, and this respondent believes that thereupon, or shortly thereafter, deliveries of iron ore ceased to be made by said Cherrie to said petitioner, but this respondent expressly de-

404 nies the inference sought to be given by the allegations in said petition, that said petitioner had anything whatever to do with the said ore contract between said Cherrie and said St. Louis Ore and Steel Company, and that said ore contract was made in any degree, or in any manner, by said Cherrie for the benefit of said petitioner, and denies all the allegations of said petition and all inferences sought to be given thereby inconsistent with the facts hereinafter stated. This respondent is advised and believes, and therefore admits that said petitioner, to enable it to fulfill its various contracts for the manufacture of rails, made an agreement with the said St. Louis Ore and Steel Company on or about the seventh day of July, A. D. 1884, whereby the said petitioner agreed to purchase and to receive from the said St. Louis Ore and Steel Company, and the said St. Louis Ore and Steel Company agreed to sell and deliver

to the said petitioner, iron ore, but this respondent denies that said ore was purchased with any special reference to the said rail contract, or that the said rail contract was of sufficient importance to the said petitioner to induce said petitioner to feel that there was any special reason for it to make its purchases from the said St. Louis Ore and Steel Company, and denies that said ore was to be furnished to the said petitioner upon the same terms and conditions as contained in the said contract between the said St. Louis Ore and Steel Company and the said Cherrie, but on the contrary, this respondent is advised and believes, and so states, that said Cherrie having the said ore contract with the said St. Louis Ore and Steel Company for the purchase of iron ore, which said ore contract he had made for his exclusive benefit and advantage, had been selling ore to the said petitioner entirely upon his own account;

405 that the said assignment of said Cherrie on or about the third day of July, A. D. 1884, put an end with the acquiescence of all parties interested, to the sale and delivery by said St. Louis Ore and Steel Company to said Cherrie of iron ore under said ore contract, and put an end to the sale and delivery of ore by said Cherrie to said petitioner; that thereupon the said St. Louis Ore and Steel Company, desiring to sell its ore, and the said petitioner still desiring to obtain it for the manufacture of rails generally, and not specially for the manufacture of the rails contemplated by said rail contract between said petitioner and said St. Louis Ore and Steel Company, a verbal agreement was within a few days after the said assignment of said Cherrie made between said St. Louis Ore and Steel Company and said petitioner that ore should be sold and delivered by said St. Louis Ore and Steel Company to said petitioner upon the same terms and conditions as ore had previously been by said Cherrie sold to said petitioner; and, thereupon, down to the appointment of the receiver at St. Louis, as hereinafter set forth, the said St. Louis Ore and Steel Company did furnish ore in accordance with such agreement to said petitioner.

This respondent admits that pursuant to said verbal agreement last mentioned said St. Louis Ore & Steel Company sold and delivered to said petitioner a considerable quantity of ore, but as to the exact quantity of such ore this respondent is not informed, and it therefore leaves the said petitioner to make such proof thereof as it may be advised if the same shall be material.

And this respondent admits that upon some of said ore the said petitioner paid freight charges, but as to the exact amount of said freight charges so paid by said petitioner for the account of

406 said St. Louis Ore & Steel Company this respondent is not informed, and it therefore leaves the said petitioner to make such proof thereof as it may be advised if the same shall be material.

This respondent is advised and believes, and therefore admits that some of the ore sold and delivered by said St. Louis Ore & Steel Company to said petitioner did not possess a sufficient quantity of metallic iron to come up to the standard agreed upon between said parties, and that by reason of such failure or shortage the said peti-

tioner had a just claim to some small amount against the said St. Louis Ore & Steel Company, but as to the amount of said claim this respondent is not informed, and it therefore leaves said petitioner to make such proof thereof as it may be advised if the same shall be material.

Further answering the allegations of said petition in respect to the said purchases of pig metal and of iron ore by said petitioner, and as to said freight charges paid by said petitioner, and as to said claim for shortage on account of defective quality of ore, this respondent states and insists that those matters were regularly and properly involved in the action at law in this court, referred to in said petition wherein this respondent was plaintiff and the said petitioner was garnishee, and that all questions in relation to said matters have been finally and conclusively passed upon and adjudicated at law in this court; that there cannot be any reopening herein of any questions relating to said matters; and that nothing remains to be passed upon herein in connection with any of said matters; and this respondent prays the same benefit of its objections herein presented to a reconsideration of said matters and a reopening of questions in regard to them, as if it had pleaded the said adjudication of this court in bar to the allegations of said petition in respect to said matters.

407 This respondent denies that the said St. Louis Ore and Steel Company committed any default in making payment for rails manufactured and delivered by said petitioner under said rail contract, or made any default whatever in the performance of said rail contract, but, on the contrary, this respondent is advised and believes, and so states that the said St. Louis Ore & Steel Company regularly and duly paid the said petitioner for all rails manufactured and delivered under said contract; that as to any money due to said petitioner on July 10, A. D. 1884, for rails theretofore manufactured and delivered, the said St. Louis Ore & Steel Company either made full payment therefor promptly, or made arrangement with the said petitioner, whereby the said petitioner acquiesced in any delay which occurred in said payment and waived any claim for damages growing out of said delay; that on the said tenth day of July A. D. 1884, the petitioner was indebted to the said St. Louis Ore & Steel Company on account of its purchases of ore and pig metal to an amount largely in excess of any indebtedness due from said St. Louis Ore & Steel Company to said petitioner for rails delivered under said rail contract; and this respondent denies that said petitioner has any claim or ever had any claim for interest or damages growing out of any failure on the part of said St. Louis Ore & Steel Company to pay said petitioner on said tenth day of July, A. D. 1884, or at any other time, for rails actually delivered under said rail contract.

This respondent denies that there was any failure on the part of the St. Louis Ore and Steel Company to take a part of the full quantity of rails contemplated in said rail contract, except as hereinbefore and hereinafter stated. This respondent is not informed

408 as to the inability of said petitioner to use the material which

it had on hand as in said petition alleged, and if the allegations in that behalf in said petition contained shall be material, it leaves petitioner to make such proof thereof as it is advised. But this respondent insists that such material was not purchased by said petitioner for the purpose of fulfilling said rail contract with said St. Louis Ore and Steel Company, but that it was purchased by said petitioner for general use; that it was injudiciously purchased through the want of care and economy of said petitioner, at a time when the price of such material was constantly falling, and that it is immaterial and foreign to the issues properly involved herein where said material came from, or for what purpose it was purchased; that any loss sustained on said material was due largely to such injudicious and imprudent purchase, and was due in no respect whatever to any action or default on the part of the said St. Louis Ore and Steel Company.

This respondent is advised and believes, and therefore admits, that there was, during the latter part of the year 1884, some fall in the price of steel rails, but as to the extent of such fall in price this respondent is not informed, and it therefore leaves said petitioner to make such proof thereof as it shall be advised, if the same shall be material.

This respondent is not informed as to what disposition was finally made of said material alleged by said petitioner to have been left on hand upon the termination of said rail contract, but this respondent is advised and believes and so states, that any such material might have been utilized in the manufacture of rails to be sold and delivered to said receiver or other parties, and it is advised and believes, and so states, that for a long time during the latter
409 portion of the year 1884, covered by the said rail contract, some or all of the mills of the said petitioner were idle, during which time the said petitioner might have manufactured the said material into rails and sold the same.

This respondent is not informed as to the amount of loss sustained by said petitioner on account of the non-fulfillment of said rail contract, or whether said petitioner sustained any loss at all, and it therefore denies that said petitioner sustained any such loss, and calls for due proof thereof, but respondent insists that any loss sustained by said petitioner was in consequence of its own action or negligence and in consequence of its failure duly to fulfill said contract, and was not brought about by any action or neglect on the part of the said St. Louis Ore and Steel Company or by any default on the part of the said St. Louis Ore and Steel Company in the fulfillment of said contract.

The respondent avers that there was no default at any time on the part of the said St. Louis Ore & Steel Company in the performance of said rail contract; that on the other hand said petitioner made default or numerous defaults in the performance thereof; that the provisions in said rail contract contained for the manufacture and delivery of said rails in stated installments show on their face that they were entirely for the benefit of the said St. Louis Ore & Steel Company; that under said rail contract the said St. Louis Ore & Steel

Company was not compelled to take said rails in monthly installments, but might have demanded and taken all said rails at any time during the continuance of said rail contract, that it would have been a complete fulfillment of said rail contract if the said St. Louis Ore & Steel Company had required said rails to be manufac-
410 tured and delivered to it at any time in December, 1884, that some time in the month of July, 1884, and as this respondent is advised, about the twenty-second day of said month, said St. Louis Ore & Steel Company passed into the hands of a receiver Ethan A. Hitchcock, appointed at St. Louis by the circuit court of the United States for the eastern district of Missouri; that said receiver took possession of the property of said St. Louis Ore & Steel Company under the express order and directions of said court to carry out the contracts of the said St. Louis Ore & Steel Company; which had by the action of said court been deprived of power to carry out said rail contract, that thereafter, and in the month of September, 1884, this suit was instituted in this court, and this court thereupon adopted all the orders made by said circuit court of the United States for the eastern district of Missouri and made the actions of that court its own actions, and said Hitchcock as receiver of this court was thereby ordered to carry out said rail contract with said petitioner; that said rail contract then had several months to run and might have been duly performed had it not been for the action of the said petitioner in refusing, or at least in failing, to comply with the terms and requirements thereof; and this respondent says that the said petitioner recognized the authority of said receiver in the premises, and recognized his assumption of the said rail contract and recognized that he thereby stood in the shoes of the St. Louis Ore & Steel Company, and it thereby accepted said receiver as a contracting party in place of said St. Louis Ore & Steel Company, and it thereby released said St. Louis Ore & Steel Company from any and all claim for damages growing out of any non-performance of said contract on the part of said St. Louis Ore &
411 Steel Company; and this respondent insists that if said petitioner has any just claim for damages against anybody growing out of said contract, which this respondent denies, such claim is wholly and exclusively against said receiver, and cannot be maintained against said St. Louis Ore & Steel Company.

This respondent admits the truth of the allegations in said petition contained relative to the institution of its two suits at law in the superior court of Cook county, and the removal of said suits into this court to the law side thereof; but it denies that the said petitioner as garnishee in said suits set forth in substance the dealings in said petition mentioned between said petitioner and said St. Louis Ore and Steel Company, and denies that said petitioner claimed in each one of said actions that the account correctly stated between said St. Louis Ore and Steel Company, and said petitioner was as set forth in said petition, or that upon the trial of the issues in said causes, said petitioner introduced proof fully sustaining the said account; on the contrary, this respondent states the facts to be, that in each of the said two attachment suits insti-

tuted by this respondent against the said St. Louis Ore and Steel Company, in which the said petitioner was summoned as garnishee, the said petitioner filed to the interrogatories therein its original, and subsequently its amended and supplemental answer, each amended and supplemental answer containing a statement of the account between itself and said St. Louis Ore and Steel Company; and said answers and said statements being alike in the two suits, that this respondent has been unable to find on file, as an exhibit with said petition, copies of said original, and said amended and supplemental answers, and if such copies have been presented it does not know whether the same are accurate or not, and therefore, for certainty as to the
412 contents of said answers this respondent begs leave to refer to the originals thereof in the files of this court; that neither said answers nor said account contained any mention of the claim in said petition set forth for one hundred dollars for damages growing out of an alleged failure of said St. Louis Ore and Steel Company to make payment to said petitioner on July 10, 1884, for rails theretofore delivered; that said claim for damages for such non-payment was not presented upon the trial of the only one of said actions in which the issues, so far as the garnishee was concerned, were tried, and that no pretense of any such claim was ever made by, or on behalf of said petitioner until after the issues against the said petitioner as garnishee had been decided in said suit; that only one of said attachment suits was tried as against said petitioner as garnishee, the garnishment proceeding in the other of said attachment suits being voluntarily dismissed by this respondent; that in said attachment suit which was tried, the said petitioner as garnishee made only one claim for damages, and that was a claim for damages alleged to have been sustained by reason of a pretended non-receipt of rails, which is the same claim the petitioner is now asserting by its said petition; that said petitioner set up said last-mentioned claim for damages in its said amended and supplemental answer and in its statement of account, and introduced proof tending to sustain the same; that all other claims of every kind whatsoever made by said petitioner as garnishee in said attachment suit so tried, as aforesaid, were substantially admitted (with a few minor changes agreed upon in the matter of amounts) by this respondent and by said St. Louis Ore and Steel Company; that the only controversy in said attachment suit so tried related to the set-off
413 claimed by said petitioner as such garnishee for alleged damages growing out of the pretended non-receipt of rails under said rail contract; that a jury was called in said cause, and the issues formed upon the said answer of said petitioner as garnishee in said suit as to said set-off were submitted to said jury; that after the said petitioner had submitted its proof before said jury, the court, on motion of the counsel for this respondent and after argument upon said motion, ruled that said set-off could not be maintained in said action and withdrew the case from said jury, and, after some minor corrections by agreement in the accounts between said St. Louis Ore and Steel Company and said petitioner, rendered

judgment upon said answer of said garnishee, as so corrected, against said garnishee and in favor of said St. Louis Ore and Steel Company for the use of this respondent for the sum of sixteen thousand four hundred seventy-three dollars and twenty-eight cents ($16,473.28). And this respondent insists that by said judgment all questions raised or which might have been raised in said suit between said petitioner and said St. Louis Ore and Steel Company were fully determined and adjudicated except the right of said petitioner to establish herein a set-off of its alleged damages growing out of the pretended non-receipt of rails by said St. Louis Ore and Steel Company; that all other questions raised or which might have been raised in said suit and which are set forth in said petition, or which might arise upon said petition, have been finally adjudicated upon and cannot be reopened; and this respondent prays the same benefit by answer in respect to all said questions as if it had pleaded the said judgment in bar thereto.

The respondent says that all the proceedings in said two
414 attachment suits are shown by the records and files of this court; that a bill of exceptions duly prepared and signed by the court shows the evidence offered as aforesaid by said garnishee; and this respondent begs leave to refer, in support of the allegations herein contained, to the records and files of this court showing said proceedings in said causes with like effect as if the same were herein set forth at length.

This respondent denies that is was ruled in said causes, or in either of them, that said item of unliquidated damages, by which this respondent understands the alleged damages growing out of the pretended non-receipt of rails, could not be "recouped" and set off in said causes or either of them, because the nature of said causes allowed only the application of strict rules of law, and precluded the application of equitable rules, and denies the inference sought to be given by said allegation that the rules in relation to a set-off are any different in equity from what they are at law, and denies that there was any question of "recoupment," properly so called, in said causes or either of them, but, on the contrary, this respondent says that the said claim for unliquidated damages growing out of the pretended non-receipt of rails was based upon an alleged breach of the said rail contract and was sought to be set off in an action instituted to recover money due from the said petitioner as garnishee on account of transactions unconnected with said rail contract, but entirely distinct and separate from said rail contract and had in pursuance of other and distinct contracts; that said alleged damages were unliquidated in their nature, and arose out of transactions distinct from the subject-matter of the suit in which the set-off was claimed. This respondent insists that said set-off was properly disallowed; and insists that it was properly disallowed for the
415 reason, among others, that such damages, if any there were, were not a subsisting cause of action in favor of said garnishee at the time when it was summoned as garnishee in said attachment suit, and therefore could not form a proper subject of set-off in said suit. This respondent further says that as to so much of the said

petitioner's claim as is presented by or indicated in the allegation in said petition contained: "that subsequent to the service of said writs of garnishment the said St. Louis Ore and Steel Company made default in the performance of said rail contract in respect to the taking of rails and paying for the same, and such defaults continued from thence hitherto." It insists that said petitioner is not entitled to maintain the said claim against this respondent by reason of the facts herein shown and to be shown; and this respondent claims the same benefit by this, its answer to the allegations of said petition, in respect to said claim as on demurrer thereto.

This respondent denies that any damages on account of default, or for any other reason accrued to said petitioner against said St. Louis Ore & Steel Company before the service of the said writs of garnishment in said attachment suits, and denies that it had any claim for damages which had accrued prior to the institution of said suits. And respondent insists that if any such claim there was which had accrued prior to the institution of said suits and the service of said writs of garnishment, it could have been set off in said suit which was tried as aforesaid, and insists that any claim which said petitioner then had and failed to present properly as a ground for set-off in said trial, is now barred, and that said petitioner is precluded from maintaining the same herein.

Your petitioner further denies that said St. Louis Ore
416 & Steel Company made default in the performance of said rail contract, and that any damages accrued to said petitioner subsequent to the service of said writs of garnishment, either before the 15th day of August, A. D. 1884, or after said date; and this respondent says that if any such damages did accrue after the service of said writs of garnishment that such damages, not being a subsisting cause of action at the time of the institution of said suits and of the service of said writs of garnishment, did not form a proper subject of set-off in the said suits at law, and are not in equity a proper subject of set-off against the judgment recovered by said St. Louis Ore & Steel Company for the use of this respondent against said petitioner, and that said petitioner cannot set off in this proceeding any damages accruing subsequent to the institution of said suits as against this respondent.

This respondent says that said two attachment suits duly proceeded to judgment against the said St. Louis Ore and Steel Company and in favor of this respondent; that the Iron Mountain Company, a corporation of Missouri, which was formerly interested in the judgment against said garnishee, has ceased to have any interest therein, and that said judgment of over sixteen thousand dollars recovered against said garnishee now stands solely for the use and benefit of this respondent under its judgments recovered in said attachment suits; until they shall have been satisfied that this re-pondent is in equity the owner of said judgment against said petitioner, and by reason of the two attachment suits holds said judgment against said garnishee with like effect as if the claim upon which said judgment was recovered had been assigned to it by said St.

Louis Ore and Steel Company on the 21st day of July, A. D.
417 1884; that any claim for damages accruing subsequent to said 21st day of July, A. D. 1884, in favor of said petitioner and against said St. Louis Ore and Steel Company is utterly without effect upon the rights of this respondent, and cannot be set off in this proceeding against such judgment for funds in the hands of said petitioner on said date; and that this respondent now holds said judgment against said petitioner under its two judgments in said attachment suits, aggregating the amount of twenty thousand dollars, entirely free and discharged from any claim of the said petitioner for a set-off on account of any damages claimed to have accrued to said petitioner against said St. Louis Ore and Steel Company after said 21st day of July, A. D. 1884.

This respondent admits the recovery of a judgment in favor of this respondent on the 7th day of January, A. D. 1886, as in said petition set forth, and admits that a verdict was rendered in one of said suits, as also in said petition alleged, and further says that a judgment was subsequently entered upon said verdict. And this respondent admits that it was its intention to proceed in said suits to a judgment against said petitioner as garnishee, which intention it carried out, as petitioner well knew, before said petition was exhibited herein in one of said suits, dismissing its garnishment proceeding in the other of said suits, because it deemed one judgment in one of the proceedings sufficient and all that was proper; and that said judgment against said garnishee is prior in point of time to the actual filing of the said petitioner's petition herein.

This respondent denies that said St. Louis Ore and Steel Company is insolvent, and that, unless the petitioner shall be allowed to recoup and set off the damages claimed in said petition, the same will be lost to said petitioner, although this petitioner admits
418 that the property of said St. Louis Ore and Steel Company is now in the possession of a receiver. But this respondent avers the facts to be that said petitioner has no just claim against said St. Louis Ore and Steel Company for damages at all; that there is no element of recoupment involved in the alleged claim which it is seeking to establish; that the embarrassments under which the said St. Louis Ore and Steel Company may have been laboring when the said receiver was appointed have largely, if not wholly, disappeared; that said St. Louis Ore and Steel Company, or said receiver, will be able to take care of any judgment which the said petitioner may recover against them or either of them, and that no reason whatever exists for allowing said petitioner any set-off whatever in this proceeding as against this respondent.

This respondent says that it is not called upon to answer the allegations in said petition contained relative to the suit instituted by the said Iron Mountain Company, because said allegations are now entirely immaterial, by reason of the satisfaction of the claim of the said Iron Mountain Company, which it was prosecuting in this jurisdiction, and its ceasing to have any interest in the matters in controversy herein.

This respondent says that for more than a year it has now had a

judgment for over sixteen thousand dollars against the said petitioner; that it is restrained and enjoined from collecting the same by order of this court; that it is thereby prevented from enforcing its legally established rights, while said petitioner leisurely asserts a claim of doubtful merit and for an entirely unascertained amount, which petitioner claims the right to have set off against said judgment; and, the premises considered, this respondent says
419 that said injunction or restraining order ought to be vacated, and this respondent ought to be allowed to collect the judgment which the law has given it without interference by this court of equity upon said petitioner's claim. And respondent prays that this court will forthwith vacate said injunction order and allow this respondent to prosecute its rights at law.

And now, having fully answered said petition, this respondent prays to be hence dismissed with its costs and charges, etc.

JOLIET STEEL COMPANY,
By ISHAM, LINCOLN & BEALE,
Its Solicitors.

(Endorsed:) Filed M'ch 28, 1887. Wm. H. Bradley, clerk.

On the same day, to wit, on the 28th day of March, 1887, came the Iron Mountain Company, by its solicitors, and filed in said clerk's office its answer to the petition of the North Chicago Rolling Milling Company in said entitled cause; which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } In Chancery.

The answer of The Iron Mountain Company, one of the respondents, to the intervening petition of the North Chicago Rolling Mill Company.

This respondent for answer to said petition says that it adopts the answer to said petition this day filed by The Joliet Steel Company, one of the respondents to said petition, and that it is advised and believes that the statements in said answer contained are true.

Further answering this respondent says that it has no longer any interest in the matters presented by said petition, a
420 settlement of the claim which it was prosecuting in this jurisdiction having been made between it and the said St. Louis Ore and Steel Company, and it therefore disclaims any interest in the judgment in said petition mentioned, rendered against the said petitioner and against which the said petitioner is seeking herein

to establish a set-off; and now having answered, this respondent prays to be hence dismissed with its costs, etc.

THE IRON MOUNTAIN COMPANY,
By ISHAM, LINCOLN & BEALE,
Its Solicitors.

Endorsed: Filed M'ch 28, 1887. Wm. H. Bradley, clerk.

421 On the same day, to wit, on the 28th day of March, 1887, came the St. Louis Ore and Steel Company, by its solicitors, and filed in said clerk's office its plea to the bill in said entitled cause; which said plea is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for said Northern District of Illinois.

ROBERT M. OLYPHANT, Complainant, *vs.* ST. LOUIS ORE AND STEEL COMPANY, GRAND Tower and Carbondale Railroad Company, Farmers' Loan and Trust Company, Henry Hitchcock, Rufus J. Lackland, and Timothy B. Edgar, Defendants.	In Equity. General Docket, No. 19241. Pending No. (Formerly 704, Now) 324.

The plea of The St. Louis Ore and Steel Company, defendant, to the bill of complaint of Robert M. Olyphant, complainant.

422 This defendant, by protestation not confessing, etc., the matter and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth, also, for plea to the whole of said bill saith:

It is true that this defendant, The St. Louis Ore and Steel Company, is a corporation formed and organized as in said bill alleged, and under the articles of consolidation and incorporation thereof succeeded to and became the owner of all the property and assumed all the liabilities of said Vulcan Steel Company and said Pilot Knob Iron Company, respectively, as in said bill mentioned.

It is true that on or about May 24, 1875, the said Vulcan Steel Company, under its then name of the Vulcan iron works, issued and executed its one thousand bonds for $1,000 each, payable on April 15, 1885, with semi-annual interest coupons thereto attached as alleged; and that said Vulcan iron works for the purpose of securing said bonds, executed to the defendants Rufus J. Lackland and Timothy B. Edgar as trustees, and the survivors of them the indenture of mortgage dated May 24, 1875, of which a copy marked Exhibit "A," is filed as an exhibit to the bill of complaint herein; that said mortgage was duly executed, acknowledged and recorded as required by law, and that said bonds thereof secured, to the amount in all of $1,000,000 principal thereof were negotiated by

said Vulcan iron works and at the time of the institution of this suit were outstanding in the hands of various persons, holders thereof for value.

It is also true that in November, 1877, the interest on said bonds was reduced from ten per cent. to seven per cent. per annum; that all interest coupons on said bonds which matured up to and
423 including April 15, 1884, were paid, so far as presented, and that at the time of institution of this suit the principal of all said bonds, to the amount of one million dollars was unpaid, also eighty-three semi-annual interest coupons on said bonds, for $35 each, which became due on April 15, 1884, but of which payment was not demanded until October 15, 1884; and since the institution of this suit the semi-annual coupons on all said bonds which matured respectively on October 15, 1884, and on April 15, 1885, as also the principal sum of said bonds which matured on April 15, 1885, became due and payable and remained unpaid until the 8th day of March, 1887, at which time, as hereinafter more fully stated, the principal sum due on each and all of said bonds, and each and all of said unpaid interest coupons thereon, and all interest accrued on said bonds since April 15, 1885, were fully paid and discharged as hereinafter stated:

And it is also true that in the month of May, 1882, this defendant, said St. Louis Ore and Steel Company, being thereto duly authorized by the owners of the larger amount in value of all its outstanding capital stock issued its certain one thousand bonds, each for the sum of one thousand dollars as in said bill of complaint alleged, which bonds were dated May 3, 1882, to mature May 1, 1902, bearing interest at seven per cent. per annum, payable semi-annually; and to secure said bonds last mentioned executed and delivered to defendant The Farmers' Loan and Trust Company, of New York, as trustee therein its certain indenture of mortgage in said bill of complaint mentioned and a copy whereof marked Exhibit B, is filed with said bill of complaint; and that when this suit was instituted all interest accrued due upon said bonds, to wit: up to and including May 3, 1884, had been paid; but the inter-
424 est accruing on said bonds last above mentioned since May 3, 1884, remained unpaid until the 8th day of March, 1887, on which day as well the principal of all said one thousand bonds last mentioned as all interest accrued thereon and which remained unpaid until said date were fully paid and satisfied as hereinafter more fully stated.

It is also true as in said bill of complaint alleged that in October, 1883, the defendant The Grand Tower and Carbondale Railroad Company, which is a railroad corporation under the laws of the State of Illinois, issued its certain seven hundred bonds to the amount of all of ($600,000) six hundred thousand dollars, being those certain railroad bonds in said bill of complaint mentioned and which were secured by a mortgage on said railroad and other property to the complainant Robert M. Olyphant and Henry Hitchcock as trustees therein, of which mortgage last mentioned a copy marked Exhibit C, is filed with said bill of complaint; also that

said railroad bonds, the principal thereof amounting to six hundred thousand dollars, were by said railroad company delivered to this defendant for its own use and benefit, and that said railroad bonds were guaranteed by this defendant, as in said bill of complaint alleged.

It is also true that in May, 1884, this defendant, under the circumstances and in the manner alleged in the bill of complaint, executed a second mortgage upon its lands in the counties of Jefferson, Madison, Iron and St. Francois, the State of Missouri, and in Jackson county, State of Illinois, to the complainant, Olyphant, and the defendant, Hitchcock, as trustees therein, of which second mortgage last mentioned a copy, marked Exhibit D, is filed with said bill of complaint.

And that in the month of January, 1884, said railroad com-
425 pany executed its promissory notes dated January 15, 1884, at twelve months in all, for the sum of $489,000; which notes were sold, and $586,500 of said railroad bonds were pledged as collateral therefor; the remaining $13,500 of said railroad bonds being also pledged to secure a note of this defendant for $10,000, dated April 17, 1884; all which notes were outstanding at the institution of this suit, all said $600,000 of railroad bonds being pledged to secure the same.

And as to so much and such parts of the said complainant's bill as seeks that an account be had and taken of the principal and interest of said bonds secured by said mortgage of said Grand Tower and Carbondale Railroad Company, dated October 1, 1883, and also secured by said mortgage of this defendant, dated May 1, 1884, and the amount due thereon, and that an account may be taken of the property of this defendant and of the encumbrances thereon, and of the priority thereof, and that said mortgages last mentioned, or either of them be foreclosed, and the property therein mentioned sold at a judicial sale, and that complainant have other relief as in said bill of complaint prayed for, this defendant for plea thereto saith:

That in the principal suit brought by said complainant, Olyphant, to wit: on July 21, 1884, in the circuit court of the United States for the eastern district of Missouri, to which this suit is ancillary, such proceedings have been had that on the 15th day of October, A. D. 1886, an interlocutory decree of foreclosure was entered, in and by which decree said court ascertained the several amounts of principal and interest respectively then due and remaining unpaid on said several bonds above mentioned, to wit: on said one thousand bonds for $1,000 each, dated May 24, 1875,
426 issued by the Vulcan iron works, and on said one thousand bonds for $1,000, each dated May 3, 1882, issued by this defendant, and on said notes dated January 15, 1884, issued by said Grand Tower and Carbondale Railroad Company, and said defendant's note dated April 17, 1884, and secured by pledge of said railroad bonds and by said mortgages dated respectively October, 1883, and May 1, 1884, as aforesaid; by which decree it was adjudged:

That unless this defendant should, on or before January 3, 1887,

pay to the said Lackland & Edgar, trustees in said mortgage, dated May 24, 1875, the sum of $1,191,604.59, with interest thereon from October 15, 1886, at seven per cent. per annum until paid, the said mortgage should be foreclosed and the property therein mentioned be sold, as in said decree provided; and further,

That unless this defendant should, on or before the 3d day of January, 1887, pay to the Farmers' Loan and Trust Company, of New York, trustee in said mortgage, dated May 3, 1882, the sum of $1,185,047.75, with interest thereon from October 15, 1886, at seven per cent. per annum until paid, the said mortgage last mentioned should be foreclosed and the property therein mentioned sold, as in said decree further provided; and further,

That unless this defendant should, on or before January 3, 1887, pay to said complainant, Olyphant, trustee in said second mortgage, dated May 1, 1884, the sum of $588,096.77, with interest at seven per cent. per annum, from October 15, 1886, until paid, said mortgage last mentioned should be foreclosed and the property therein mentioned be sold, as in said decree provided.

But this defendant further says that after said decree of
427 October 15, 1886, was so entered in said principal cause in said United States circuit court for the eastern district of Missouri, being the consolidated cause number 2394 and 2507 in equity in said court, certain negotiations were had between this defendant and its creditors, including the holders of all and every of said bonds and notes hereinbefore mentioned; that, as the result of said negotiations, all and singular the holders of said several classes of said bonds, secured by said mortgages above mentioned, dated respectively May 24, 1875, and May 3, 1882, and October 1, 1883, and May 1, 1884, agreed in writing, each for himself, to accept from this defendant in satisfaction of all and singular said several classes of outstanding bonds, which were secured respectively by said mortgages last above mentioned, certain new bonds, which this defendant was duly authorized to issue for that purpose by a vote of the persons holding the larger amount in value of the capital stock thereof, to wit: at a special meeting of said shareholders of this defendant, held upon due notice, as required by the laws of Missouri, at the general office of this defendant, in the city of St. Louis, State of Missouri, on December 28, 1886; and which bonds, together with certain new mortgages securing the same, upon terms agreed to by, all and singular the said holders of said former bonds, were thereupon executed by this defendant for the purpose aforesaid.

And this defendant further says that on the 7th day of February, 1887, upon petition of this defendant filed on said day in said consolidated cause No. 2394 and 2507 in said United States circuit court for the eastern district of Missouri, being said principal suit brought by this complainant Olyphant to which this suit is ancillary, in which petition was set forth in substance the said agreement
428 so made by this defendant with said holder of outstanding bonds respectively, a further order was made and entered by consent of all parties to said consolidated suit, including this complainant, Robert M. Olyphant, whereby it was ordered:

That so much of the decree entered in said case on the 15th day of October, A. D. 1886, as authorized and directed a sale of the mortgaged property therein described, be vacated; also that the said St. Louis Ore & Steel Company, defendant, be authorized to proceed with and complete the adjustment of its liabilities in the manner proposed in its petition filed in said cause on said 7th day of February, A. D. 1887; also that the defendant and cross-complainants, Lackland & Edgar, The Farmers' Loan & Trust Company, and Robert M. Olyphant, (to wit: this complainant) as trustees respectively in the mortgages mentioned in said decree (being the same mortgages above mentioned, dated respectively May 24, 1875, May 3, 1882, October 1, 1883, and May 1, 1884) and each of them be authorized to do and perform all things necessary to carry out said agreement and settlement on their part, all of which will more fully appear by a copy of said order or decree of February 7, 1887, duly certified by the clerk of said United States circuit court for the eastern district of Missouri, and now here shown to the court.

And this defendant further says that in pursuance of said order so made in said consolidated cause No. 2394 and 2507, this defendant, and the said several trustees in said mortgages above mentioned, including this complainant Olyphant, did, to wit: on the 8th day of March, A. D. 1887, carry out and fulfill said agreement between this defendant and said several bondholders for the satisfaction for the said several bonds, as well of the principal as of the interest thereon accrued to said date, to wit: at the city of New York in the State of New York.

429 That on said 8th day of March 1887, each and every of said one thousand bonds for $1,000 each, dated May 24, 1875, issued by said Vulcan iron works and secured by mortgage of that date above mentioned, together with all unpaid interest coupons thereunto belonging, and each and every of said one thousand bonds for $1,000 each dated May 3, 1882, and secured by mortgage of the date above mentioned, and each and every one of said railroad bonds, seven hundred in number, being in all for the principal sum of $600,000, dated October 1, 1883, guaranteed by this defendant and secured by said mortgage executed by this defendant and dated May 1, 1884, above mentioned, were by the several owners and legal holders of said bonds in pursuance of said agreement, to wit: by C. B. Burnham, the authorized agent of all the bondholders in that behalf, respectively produced and surrendered to this defendant for cancellation; in consideration of which this defendant then and there delivered to said bondholders respectively, that is to say, to said Burnham, their authorized agent in the behalf, in pursuance and fulfillment of its agreement aforesaid, its certain new mortgage bonds and income bonds and paid him certain moneys, in all to the full amount agreed to be accepted by said bondholders respectively in payment and satisfaction of said outstanding bonds so rendered as aforesaid.

Wherefore the defendant says that all and singular the bonds and coupons mentioned in said bill of complaint in this cause, and particularly all said railroad bonds dated October 1, 1883, and all

interest thereon, which were secured as in said bill alleged by said mortgages dated respectively October 1, 1883, and May 1, 1884, have been fully paid and satisfied.

430 And this defendant further says that in connection with and as part of the said settlement and payment of said bonds so made by this defendant on said 8th day of March, 1887, at said city of New York, certain deeds of release, duly executed and acknowledged by the said Lackland & Edgar, as trustees in said mortgage dated May 24, 1875, and by said Farmers' Loan and Trust Company, as trustee in said mortgage dated May 3, 1882, and by the said complainant Olyphant, and the defendant Hitchcock, as trustees in said mortgages respectively dated October 1, 1883, and May 1, 1884, were delivered to this defendant by said trustees respectively; in and by which deed of release, respectively, the said trustees respectively grantors therein, acknowledge the satisfaction by and surrender to the defendant of all and singular the said several bonds by said mortgages respectively secured; that is to say:

Said complainant Olyphant by deed of release dated February 28, 1887, executed and acknowledged under his hand and seal, and by him delivered to this defendant on March 8, 1887, did acknowledge and declare that all and singular the said seven hundred bonds of said Grand Tower and Carbondale Railroad Company, dated October 1, 1883, above mentioned, had been fully paid and satisfied, and did release and convey unto said Grand Tower and Carbondale Railroad Company, all and singular the property mentioned in or intended to be conveyed by said mortgage dated October 1, 1883, to said Olyphant and said Hitchcock as trustees therein mentioned; and the said Hitchcock, defendant herein, co-trustee in said mortgage, joined in execution and delivery of said deed of release.

431 Said complainant Olyphant, by his certain other deed of release, also dated the 28th day of February, A. D. 1887, by him, said Olyphant, duly executed and acknowledged under his hand and seal, and delivered to this defendant on March 8, A. D. 1887, as aforesaid, did acknowledge and declare that those certain seven hundred bonds of said Grand Tower and Carbondale Railroad Company, dated October 1, 1888, in and by said mortgage mentioned and secured had been fully paid and satisfied, and did thereby release and convey unto the said St. Louis Ore & Steel Company, to wit: this defendant, all and singular the property mentioned and conveyed in and by said mortgage deed of trust, dated May 1, 1884, the said defendant, Henry Hitchcock, who was named as trustee with said Olyphant in said mortgage deed last mentioned, but who disclaimed and renounced such trust, and refused to execute the same, nevertheless joining in the execution of said deed of release and in delivery thereof to this defendant for the sake of conformity.

Which two last-mentioned deeds of release are now here shown to the court by this defendant:

And this defendant says that by reason of the premises both said

mortgages last mentioned, that is to say, said railroad mortgage, dated October 1, 1883, and said mortgage executed by this defendant, dated May 1, 1884, to this complainant Olyphant, and this defendant Hitchcock, as in said bill of complaint alleged, have been wholly released and satisfied, and all and singular the bonds and interest thereon secured thereby have been paid, surrendered and canceled, and that said complainant as trustee therein is not entitled to have an account taken of the bonds by said mortgages secured, nor to have said mortgages or either of them foreclosed, nor to have any property therein mentioned sold at a judicial or
432 other sale thereof, nor is entitled to any relief whatever as against the defendant, such as prayed for in said bill of complaint.

Therefore this defendant pleads the said payment and satisfaction and release of said bonds and mortgages in said bill of complaint mentioned in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned, and humbly prays the judgment of this honorable court whether it ought to be compelled to make any further answer to so much of the said bill as is before pleaded unto.

THE ST. LOUIS ORE & STEEL CO.,
By HUTCHINSON & LUFF,
Solicitors for Defendant.

433 I certify that in my opinion the foregoing plea is well founded in point of law.

WM. M. LUFF.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

Ethan A. Hitchcock, undersigned, being first duly sworn, on his oath says that he is the president of The St. Louis Ore & Steel Company, one of the defendants in the above-entitled cause and on whose behalf the foregoing plea is to be filed; that he has read the said plea and knows the matters therein set forth; that said plea is not interposed for delay and is true in point of fact.

E. A. HITCHCOCK.

Subscribed and sworn to before the undersigned, a notary public within and for the city of St. Louis, State of Missouri, duly commissioned and qualified as such for a term of office which will expire on the 28th day of June, A. D. 1889.

In witness whereof I have hereunto set my hand and official seal as such notary public, at office, in said city of St.
[SEAL.] Louis and State of Missouri, this 26th day of March, A. D. 1887.

C. C. LOGAN,
Notary Public within and for the City of St Louis and State of Missouri.

Due notice of the filing of the within plea is hereby ac-
434 knowledged by complainant, R. M. Olyphant, and said plea may be set down for further hearing without further notice.

EDMUND T. ALLEN,
Sol'rs for Compl't, R. M. Olyphant.
WILLIAMS & THOMPSON.

(Endorsed:) Filed M'ch 28, 1887. Wm. H. Bradley, cl'k.

435 Afterward, to wit, on the first day of April, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

By agreement of the parties, the plea of the St. Louis Ore and Steel Company is hereby set for hearing on the eleventh instant.

436 Afterward, to wit, on the eleventh day of April, 1887, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its replication to the answer of the Joliet Steel Company in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court Thereof, April Term, A. D. 1887.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL CO. *et al.* } In Chancery.

The replication of The North Chicago Rolling Mill Co., intervening petitioner, to the answer of the Joliet Steel Company.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereto says that it will aver, maintain, and prove its intervening petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer
437 contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto,

confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court may direct, and humbly prays as in and by said intervening petition it has already prayed.

WILLARD & DRIGGS,
Att'ys for Repliant.

M. W. FULLER, *Of Counsel.*

(Endorsed:) Filed Ap'l 11, 1887. Wm. H. Bradley, clerk.

On the same day, to wit, on the eleventh day of April, 1887, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its replication to the answer of the Iron Mountain Company in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

In the Circuit Court Thereof, April Term, A. D. 1887.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL CO. *et al.* } In Chancery.

438 The replication of The North Chicago Rolling Mill Co., intervening petitioner, to the answer of the Iron Mountain Company.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereto says that it will aver, maintain, and prove its intervening petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court may direct, and humbly prays as in and by said intervening petition it has already prayed.

WILLARD & DRIGGS,
Att'ys for Repliant.

M. W. FULLER, *Of Counsel.*

(Endorsed:) Filed Ap'l 11, 1887. Wm. H. Bradley, clerk.

439 On the same day, to wit, on the eleventh day of April, 1887, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its replication to the answer of the St. Louis Ore & Steel Company in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit — Thereof, April Term, A. D. 1887.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS — & STEEL CO. *et al.* } In Chancery.

The replication of The North Chicago Rolling Mill Co., intervening petitioner, to the answer of the St. Louis Ore & Steel Co.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereto says that it will aver, maintain, and prove its intervening petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by the repliant; without this, that
440 any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court may direct, and humbly prays as in and by said intervening petition it has already prayed.

WILLARD & DRIGGS,
Att'ys for Repliant.

M. W. FULLER, *Of Counsel.*

(Endorsed:) Filed Ap'l 11, 1887. Wm. H. Bradley, clerk.

441 Afterward, to wit, on the sixteenth day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes the said defendant, The St. Louis Ore and Steel Company, by Hutchinson & Luff, its solicitors, and the North Chicago

Rolling Mill Company, by Willard & Driggs, its solicitors, also comes, and now comes on to be heard the plea of the said St. Louis Ore & Steel Company heretofore filed and set for hearing herein, and the motion to dissolve the order heretofore entered herein restraining the issuing of execution upon the judgment in favor of the Joliet Steel Company, mentioned in the intervening petition of said North Chicago Rolling Mill Company, and the court having heard the said plea and motion and the arguments of counsel, and being fully advised in the premises, it is ordered, adjudged, and decreed that the said plea be, and the same is hereby, sustained; that the said bill of complaint be, and the same is hereby, dismissed at the
442 costs of said complainant, and that Ethan A. Hitchcock, the receiver heretofore appointed herein, be discharged upon the filing and approving of his account as such receiver; but it is further ordered that the intervening petition of the said North Chicago Rolling Mill Company, filed herein on the eighteenth day of January, 1886, stand herein as an original bill, with the answers thereto and the replications of said intervening petitioner heretofore filed herein, free from all prejudice consequent upon the dismissal of said bill of complaint, and that said cause be, and the same is hereby, referred to Henry W. Bishop, Esq., one of the masters in chancery of this court, to take testimony therein and report the same to the court with convenient speed. It is further ordered that the motion to dissolve the restraining order above mentioned be, and the same is hereby, overruled, and it is ordered that the said North Chicago Rolling Mill Company shall, within ten days from the entering of this order, file herein an injunction bond in the penal sum of twelve hundred dollars, with a surety to be approved by the clerk of this court, conditioned as is usual in cases of injunctions to restrain the collection of a judgment at law. It is further ordered that the money collected and to be collected by the First National Bank of Chicago on the notes of the Pine Lake Iron Company be paid to the
443 said St. Louis Ore and Steel Company, and that said receiver pay the money remaining in his hands after the payment of proper charges and expenses to said company.

444 Afterward, to wit, on the twenty-fourth day of May, 1887, there was filed in said clerk's office an injunction bond in said entitled cause; which said injunction bond is in the words and figures following, to wit:

Injunction Bond.

Know all men by these presents that we, the North Chicago Rolling Mill Company and Orrin W. Potter, of the county of Cook and State of Illinois, are held and firmly bound unto the St. Louis Ore & Steel Company in the sum of twelve hundred ($1,200) dollars, to be paid to the said St. Louis Ore & Steel Company for its use and the use of whom it may concern, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this twentieth day of May, A. D. 1887.

Whereas the above-bounden North Chicago Rolling Mill Company has filed its intervening petition in the United States circuit court in and for the northern district of Illinois against the above-named St. Louis Ore & Steel Company, the Joliet Steel Company, and the Iron Mountain Company, praying, among other things, for an injunction to restrain the above-named defendants from having execution issued upon the judgment at law entered January 13, 1886, against said North Chicago Rolling Mill Company, as gar-
445 nishee, in the suit in said United States circuit court in and for said northern district of Illinois entitled The Joliet Steel Company *vs.* The St. Louis Ore & Steel Company *et al.*, general number 19235, term number 456;

And whereas said court has allowed an injunction for that purpose, according to the prayer of said bill, upon the said North Chicago Rolling Mill Company giving bond and security as provided by law:

Now, therefore, the condition of the above obligation is such that if the above-bounden North Chicago Rolling Mill Company, its successors or assigns or any of them, shall and do well and truly pay or cause to be paid to the said St. Louis Ore & Steel Company, for its use and the use of whom it may concern, all such costs and damages as shall be awarded against the said intervening petitioner in case the said injunction shall be dissolved, then the above obligation to be void; otherwise to remain in full force and virtue.

NORTH CHICAGO ROLLING MILL CO.,
By O. W. POTTER, *Pres't.* [SEAL.]
ORRIN W. POTTER. [SEAL.]

Attest: W. H. HANNAH, *Ass't Sec'y.*

[Seal of Company.]

Approved.
H. W. BLODGETT, *Judge.*
WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed May 24, 1887. Wm. H. Bradley, clerk.

446 Afterward, to wit, on the seventh day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes Ethan A. Hitchcock, the receiver of the said St. Louis Ore and Steel Company, by Hutchinson & Luff, his solicitors, and files herein his report and account of moneys collected and expended

by him, from which it appears that said receiver has collected the sum of seven thousand one hundred and ninety-seven dollars and fifty-six cents ($7,197.56), and that he has expended the sum of four hundred and eighty-one dollars and eighty cents ($481.80), for which sum he has filed vouchers with his said report, leaving in his hands the sum of six thousand seven hundred and fifteen dollars and seventy-six cents ($6,715.76). Upon reading the said report and hearing evidence in support thereof, it is ordered that the said report be, and it is hereby, approved; that the said receiver pay to
Hitchcock, Madill & Finkelnburg for legal services ren-
447 dered, as stated in their account, the sum of fifteen hundred dollars; that said receiver retain as compensation for his services herein the sum of two thousand five hundred dollars, and after paying any further costs in this cause he pay the remainder of said sum of six thousand seven hundred and fifteen dollars and seventy-six cents ($6,715.76) to the said St. Louis Ore and Steel Company, and upon filing herein his final account showing the said payments, with proper vouchers therefor, the said receiver shall be discharged, the St. Louis Ore and Steel Company consenting to this order.

Afterward, to wit, on the eighth day of June, 1887, came Ethan A. Hitchcock, receiver, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

448 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the said Northern District of Illinois.

ROBERT M. OLYPHANT, Complainant,
vs.
THE ST. LOUIS ORE & STEEL COMPANY and Others, Defendants. } In Chancery. Bill.

To the Honorable Walter Q. Gresham, judge of said circuit court:

The report and account of Ethan A. Hitchcock, receiver of said St. Louis Ore & Steel Company, in the above-entitled cause, respectfully shows—

That since his appointment as such receiver he has received from the First National Bank of Chicago cash collected upon the notes of the Pine Lake Iron Company deposited in said bank for collection by order of court made in this cause, amounting to ---------- $7,197 56

He has made disbursements, for which he presents vouchers, as follows:

1887.			
May —. For transcript of record for Supreme preme Court in case of Joliet Steel Co. *vs.* St. Louis Ore & Steel Co. ----------	61 90		
Am'ts for'd ----------	61 90		7,197 56

449	Bro't over	61 90		$7,197 56
	Costs in this suit	169 90		
	To Hutchinson & Luff, counsel fees	250		
			481 80	
	Balance cash in hand		6,715 76	
			$7,197 56	$7,197 56

The undersigned, receiver, respectfully prays that, in consideration of the responsibility assumed and services rendered by him in this suit, the sum of $2,500 compensation may be allowed him out of said fund; also that the bill rendered by Messrs. Hitchcock, Madill & Finkelnburg for the sum of $1,500 in full of special services rendered at St. Louis, Chicago, and New York in negotiating and procuring the settlement of the claim against Cherrie & Co., approved by this court, may be ordered to be paid out of said fund, and for such further orders in respect of the balance remaining in his hands as such receiver as to the court shall seem meet.

E. A. HITCHCOCK, *Receiver.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Ethan A. Hitchcock, undersigned, being duly sworn, upon oath states that the foregoing report and account by him rendered as receiver in the above-entitled cause is just and true to the best of his knowledge and belief.

E. A. HITCHCOCK.

Subscribed and sworn to before me, the undersigned, a notary public within and for the city of St. Louis and State of Missouri, this 6th day of June, A. D. 1887.

HENRY J. SPAUNHORST,
[SEAL.] *Notary Public within and for the City of St. Louis, State of Missouri.*

(Endorsed:) Filed June 8, 1887. Wm. H. Bradley, clerk.

450 Afterward, to wit, on the sixteenth day of June, 1887, came E. A. Hitchcock, receiver, and filed in said clerk's office his final account; which said final account, together with the vouchers *are* in the words and figures following, to wit:

451 Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY *et al.*

The Final Account of Ethan A. Hitchcock, Receiver of said St. Louis Ore & Steel Company.

DR.

1887.
June 8. For balance per last account $6,715 76

CR.

June 9. By cash paid Hitchcock, Madill & Finkelnburg for legal services	$1,500		
" receiver's compensation	2,500		
" cash paid, court costs	2	50	
" " St. Louis Ore & Steel Co.	2,713	26	
			$6,715 76

STATE OF MISSOURI, } ss:
City of St. Louis, }

Ethan A. Hitchcock, being duly sworn, says the above is a just and true account of all moneys received and paid out by him as receiver of said St. Louis Ore & Steel Company, as therein set forth.

E. A. HITCHCOCK, *Receiver.*

Subscribed and sworn to before me this 14th day of June, 1887.
[SEAL.] BENJ. A. SUPPAN,
Notary Public.

Endorsed: Filed June 16, 1887. Wm. H. Bradley, clerk.

452 $2.50. CHICAGO, *June 15th*, 1887.

Received of Ethan A. Hitchcock, receiver of the St. Louis Ore and Steel Company, two & $\frac{50}{100}$ dollars for certified copies of orders in case Robert M. Olyphant *vs.* St. Louis Ore & Steel Company *et al.*

WM. H. BRADLEY,
Clerk Cir. C't U. S., Nor. Dist. Ill.

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

453 St. Louis Ore & Steel Co.

ST. LOUIS, *June 14th*, 1887.

Received of E. A. Hitchcock, receiver, twenty-seven hundred and thirteen and $\frac{26}{100}$ dollars, balance remaining in his hands as per final report filed in cir. court of U. S. for northern district of Ills.

$2,713.26. ST. LOUIS ORE AND STEEL CO.,
By O. L. GARRISON, *Treas.*

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

454 St. Louis Ore & Steel Co.

ST. LOUIS, *June 10th*, 1887.

Received of E. A. Hitchcock, receiver, twenty-five hundred dollars account of services in northern dist. Ills.

$2,500.00. E. A. HITCHCOCK, *Receiver.*

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

455 St. Louis Ore & Steel Co.

ST. LOUIS, *June 14th*, 1887.

Received of E. A. Hitchcock, receiver, twenty-seven hundred & thirteen and $\frac{26}{100}$ dollars, balance remaining in his hands as per final report filed in cir. court of U. S., northern dist. of Ills.

$2,713.26. ST. LOUIS ORE & STEEL CO.,
By O. L. GARRISON, *Treas.*

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

456 ST. LOUIS, *June 2d*, 1887.

E. A. Hitchcock, Esq., receiver St. Louis Ore and Steel Company, in case of Olyphant *vs.* St. Louis Ore and Steel Co. *et al.*, in U. S. circuit court, N. dist. of Illinois, in account with Hitchcock, Madill & Finkelnburg, attorneys, for professional services in connection with prosecution and settlement of claim of St. Louis Ore and Steel Co. against Messrs. Cherrie & Co., Chicago, as follows:

1886.

May 1. Conference as to effect of discontinuance of assignment proceedings of R. M. Cherrie in Cook county court; wrote and telegraphed your Chicago attorneys.

4 to 6. At your request, H. Hitchcock went to Chicago with O. L. Garrison, your agent, to learn situation, and for conference with R. M. Jenkins, assignee of Cherrie and others; spent two days there; interviews with Jenkins, assignee, and F. Ullman, as attorney; fully ascertained facts; inquired as to assets of assigned estate and disposition thereof by assignee, &c.; sent you full report by O. L. Garrison; arranged with F. Ullman for conference with Messrs. R. M. Cherrie and R. S. Frink, holder of assigned assets, May 13.

457

19 to 24. Correspondence with F. Ullman and Isham and Lincoln, attorneys for Joliet Steel Co., about conference with Messrs. Cherrie and Frink at Chicago and as to obtaining orders in St. Louis authorizing settlement of Cherrie claim; prepared petition to U. S. cir. c't at St. Louis in principal Olyphant suit, fully stating situation at Chicago and asking authority for you to settle Cherrie claim.

May 24. Petition presented and order made by U. S. circuit court at St. Louis remitting you to U. S. cir. ct. at Chicago for further authority and proceedings in Cherrie matter; so wrote F. Ullman and your attorneys at Chicago; advised by F. Ullman conference appointed for 28th inst. at Chicago with Messrs. Cherrie and Frink.

1886.

May 27. At your request H. Hitchcock returned to Chicago for conference as above.

28. Long conference at Chicago with Messrs. R. M. Cherrie and R. S. Frink and F. Ullman, their attorney, in efforts to negotiate settlement of your claim against Cherrie & Co. for $106,000; obtained full information as to assets turned over to Frink; various propositions made and discussed; no definite result reached; returned to St. Louis.

31. Further correspondence with Messrs. Hutchinson & Luff, your Chicago counsel, and with F. Ullman as to new proposition submitted by R. S. Frink.

June 4. Correspondence with Hutchinson & Luff in reference to Cherrie matter and proceedings in Olyphant suit at Chi-
458 cago.

5. Sundry conferences with you as to settlement of Cherrie claim at Chicago; written opinion and advice as to Frink's proposition and further negotiations and authority in respect of same.

17. Correspondence (sundry letters) to this date with Messrs. Hutchinson & Luff, and instructions as to further negotiations with F. Ullman, attorney for Frink.

July 2. Further correspondence with Messrs. Hutchinson & Luff on same subject and instructions as to basis of settlement with Messrs. Frink and Cherrie.

Wrote F. Ullman (attorney for Messrs. Frink and Cherrie), fully discussing their proposition for settlement Cherrie claim, and proposed modifications of same.

3. Wrote Messrs. Isham and Lincoln (attorneys for Joliet Steel Co.) on same subject; also with reference to adjustment between Joliet Steel Co. and St. Louis Ore and Steel Co.

Wrote fully to Messrs. Hutchinson & Luff on same subject, enclosing copy of above.

7. Further correspondence with F. Ullman and Hutchinson & Luff on same subject; at your request prepared draft of contract for settlement of Cherrie claims with R. S. Frink and Pine Lake Iron Co.

8. Wrote F. Ullman, enclosing draft of contract for settlement of claims; also wrote Hutchinson & Luff, enclosing copy
459 of proposed contract, with instructions as to same; fully advised you of said correspondence.

12. Further correspondence with Hutchinson & Luff concerning above.

July 15. Receiver reply from F. Ullman, with revised draft of contract; answered same at length, discussing modifications proposed; rewrote contract as modified, and enclosing same to him to be forwarded to R. S. Frink.

1886.

July 19. Further correspondence to date with Messrs. Hutchinson & Luff as to above.

21. Received and answered long letter from F. Ullman proposing modifications of draft contract; returned same revised and ready for execution; wrote Messrs. Isham & Lincoln in regard to proposed contract and relation of Joliet Steel Co. to same; also wrote Hutchinson & Luff on same subject, fully advising as to present situation.

23. Wrote you (at Magnolia, Mass.) fully advising you of negotiations with Messrs. Frink and Ullman to date, and enclosing draft of contract as provisionally agreed on for your approval.

24. Spent this day in Chicago further negotiating with F. Ullman as to proposed settlement of Cherrie claims; further modifications of draft contract agreed on, subject to your approval; wrote you fully from Chicago, advising you as to same.

26. Wrote you at length (to Magnolia, Mass.) fully advising as to present situation and terms of settlement Cherrie claims.

30. Received telegram from F. Ullman reporting Frink's refusal to make contract as proposed, suggesting further
460 modifications, and proposing conference with R. S. Frink at New York; replied fully by wire and mail making appointment with R. S. Frink at New York, Aug. 4th; telegraphed and wrote you fully advising of same; appointment made for Aug. 4, at New York, as proposed.

31. Further correspondence (wire and mail) with F. Ullman. Appointment for R. S. Frink at New York Aug. 4 confirmed. Wrote Hutchinson & Luff; fully advising of same; also wrote you fully at Magnolia, Mass.

Aug. 1. Left St. Louis for New York to attend conference with Frink at your request.

4. Engaged with you all morning at Fifth Avenue hotel, New York, in conference with R. S. Frink as to settlement Cherrie claim. Draft of contract discussed fully; modifications agreed on; same revised; reprinted (typewriter) and executed in duplicate, and your claim against Messrs. Cherrie & Co. for $106,000 (including acceptances held by creditors of ore and steel Co.) settled at 50 cents, subject to approval of U. S. circuit court at Chicago.

5. Engaged all morning preparing and forwarding papers and instructions to O. L. Garrison, your agent at St. Louis; also wrote fully to Messrs. Hutchinson & Luff, your attorneys at Chicago, enclosing original contract signed by R. S. Frink and to be signed for Pine Lake Iron Co.

1886. At Chicago, with instructions as to further steps to be taken in pursuance of same.

461

Aug. —. Advised (at Magnolia, Mass.) by Messrs. Hutchinson & Luff of execution of Frink contract by Pine Lake Iron Co.; received from them draft of petition to U. S. circuit court for order approving contract.

Presented petition for order approving Frink contract to Judge Gresham (in chambers) at Marblehead, Mass.; fully explained same; order made approving contract; forwarded to Chicago and entered in Olyphant suit.

Sept. 6. Further correspondence from St. Louis with *to* Messrs. Hutchinson & Luff in reference to Frink contract and

8. forwarding to Chicago Cherrie acceptances therein mentioned for deposit with First National bank.

Oct. 5. Prepared and submitted to John Wickham, special master in case of (principal) Olyphant suit, at St. Louis; full statement of all steps taken at Chicago in reference to Cherrie claim and orders made in connection therewith.

Nov. 11. Advised as to your duties as receiver in Olyphant suit at Chicago in respect of $7,197.56 paid you on account of Cherrie settlement; correspondence with Messrs. Hutchinson & Luff concerning same.

20. Full report as to situation of Olyphant suit at Chicago and advice as to further steps to be taken in respect of pending claims.

1887.

June 1. Last instalment of Pine Lake Iron Co. notes paid at First National bank, Chicago, and Frink contract above mentioned executed by collection of $53,000, in full settlement of claims compromised therein.

462 In full of above services, as above, $1,500.

Approved.

E. A. HITCHCOCK, *Receiver.*

Received, St. Louis, June 9th, 1887, of E. A. Hitchcock, receiver, &c., in full of above bill, allowed by order of U. S. circuit court for northern district of Illinois, June 7, 1887, in the case of Olyphant *vs.* St. Louis Ore and Steel Co. *et als.*

HITCHCOCK, MADILL & FINKELENBURG, *Att'ys.*

Approved.
W. Q. G.

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

463 On the same day, to wit, on the sixteenth day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes Ethan A. Hitchcock, receiver of said St. Louis Ore and Steel Company, by his solicitors, and files herein his final account as such receiver, with vouchers, and, it appearing to the court that the said receiver has fully accounted for all the monies which have come to his hands as such receiver and has fully complied with all the orders of this court in the premises, it is ordered that the said account be, and it is hereby, approved; and it is further ordered that said receiver be, and he is hereby, discharged.

Afterwards, to wit, on the third day of May, 1888, came David K. Ferguson, by his solicitors, and filed in said clerk's office his supplemental bill in said entitled cause; which said supplemental bill is in the words and figures following, to wit:

464 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court Thereof. In Chancery.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY. } Bill for Appointment of Receiver.

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

Your orator, David K. Ferguson, of Saint Louis, and a resident of the State of Missouri, brings this, his supplemental bill in the nature of a cross-bill, against the North Chicago Rolling Mill Company, a corporation organized under the laws of the State of Illinois, and having its principal place of business in said district; and thereupon your orator says that on or about the — day of ——, —, the said North Chicago Rolling Mill Company filed herein an intervening petition wherein it alleged that on the 21st day of July, 1884, the Joliet Steel Company, a corporation of the State of Illinois, instituted two several suits at law in the superior court of Cook county, Illinois, against the said St. Louis Ore & Steel Company in attachment. One based on an alleged indebtedness from said last-named company of about $8,000, and the other based on an alleged indebtedness of about $10,000, and that said petitioner on the same day was summoned therein as garnishee. Said petitioner also states in said petition that subsequently and on or about the 15th day of September, 1884, both of said suits were removed to this court, the first of which is numbered 19235, and the second of which is numbered 19236; that said petitioner also alleged in said petition that it had

sustained damages from the non-fulfilment of a certain con-
465 tract by the said St. Louis Ore & Steel Company, made between said company and said petitioner, The North Chicago Rolling Mill Company. And that, upon the trial of the issues between petitioner and plaintiff in said causes, it introduced proof of the damages aforesaid, but that it was ruled in said causes that said unliquidated damages could not be recouped and set off in said cause- or either of them, because the nature of said causes allowed only the application of strict rules of law, and precluded the application of equitable rules.

That said petitioner, The North Chicago Rolling Mill Company, further stated in its said petition that on the 7th day of the present month (January, 1886) a judgment was entered in the aforesaid suit No. 19235, for the sum of $8,466.64; and that the verdict in said suit No. 19236, was rendered in favor of the plaintiff for the sum of $10,051.78, and that said petitioner was informed and believed that it was the intention of the Joliet Steel Company and of the St. Louis Ore and Steel Company to proceed to judgment against the petitioner as garnishee in said two causes, pursuant to the ruling of the court therein as aforesaid, and thereby deprive petitioner of all benefit of the recoupment and set-off of the damage aforesaid.

That said petitioner in said petition prayed among other things that the court would in some proper way, settle the issues which, if any, should be raised upon petitioner's complaint, and that when settled the amount found due to petitioner should be recouped and set off in the settlement and adjustment in the dealings between it and the said St. Louis Ore and Steel Company and that petitioner might have a decree in its favor for any balance found to be due it upon said adjustment.

466 That said petitioner further prayed that until a settlement and adjustment of the whole of said account, including the damages aforesaid, the said Joliet Steel Company and the said St. Louis Ore and Steel Company might be restrained from further prosecuting the said causes No. 19235 and No. 19236 in this court; and that upon the final hearing of said petition said restraining order might be made perpetual, and that said petitioner might have such other relief in the premises as justice and equity should require.

Your orator further shows unto your honors, that on or about the 7th day of January, 1886, a judgment was rendered in said suit No. 19235, against said St. Louis Ore and Steel Company and against said North Chicago Rolling Mill Company, as garnishee, for $9,101.85, and that on or about the 5th day of February, 1886, a judgment was rendered in said suit No. 19236, against said St. Louis Ore and Steel Company and said North Chicago Rolling Mill Company, as garnishee, for $10,760.41.

Your orator further shows unto your honors that said two judgments were, on the 9th day of April, 1887, assigned for a valuable consideration to your orator by said Joliet Steel Company, and that he is now the holder as assignee of said two judgments, and has full authority to collect the same.

Your orator is advised that he is entitled to the full benefit of any

defense which the said Joliet Steel Company has made or could make against the allegations and claims of the North Chicago Rolling Mill Company, set forth in its said petition; and he prays that he be made a party to said petition, so ordered to stand as an original bill, and that he may have leave to appear, prove and defend his rights and interests in and to said judgments.

467 And that the testimony already taken in said matter may be read in evidence for or against your orator with the same effect as it could have been read for or against said Joliet Steel Company, had no assignment of said judgments been made. And that such further and other order may be made in the cause as to your honors shall seem meet.

And your orator will ever pray, etc.

DAVID K. FERGUSON,
By O. K. A. HUTCHINSON,
His Solicitor.

HUTCHINSON & LUFF,
Solicitors and of Counsel.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

William M. Luff, of said district, being duly sworn, deposes and says, that he is one of the solicitors of David K. Ferguson, whose name is signed to the foregoing bill, and that he makes this affidavit on his behalf. That he has read said bill and knows the contents thereof, and that most of the facts therein stated are true, of his own knowledge, and he is informed and believes that all the statements in said bill are true. That this affiant knows that the judgments described in said bill were, on or about the 9th day of April, 1887, assigned for a valuable consideration to said Ferguson, and he is informed and believes said Ferguson is now the holder of said judgments and has full authority to collect the same. That said Ferguson is a resident of the State of Missouri, and cannot conveniently make affidavit to the truth of said bill, and this affiant is more familiar with the matters therein stated than said Ferguson.

WM. M. LUFF.

Subscribed and sworn to before me the 12th day of April, 1888.
[SEAL.] EDWARD C. MILLS,
Notary Public.

(Endorsed:) Filed May 3, 1888. Wm. H. Bradley, clerk.

468 Afterward, to wit, on the fourteenth day of May, in the adjourned May term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

No one appearing, the motion entered on the motion calendar for hearing this day is stricken from the calendar.

469 Afterward, to wit, on the 26th day of November, 1888, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY. } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mill Company.

Master's Report of Testimony.

To the honorable the judges of said court:

The above-entitled cause having been referred to me as master in chancery of said court by an order entered herein on the sixteenth (16th) day of May, A. D. 1887, I do hereby report that, having notified the parties interested of a hearing before me for the purposes in said order expressed, at my office, room 24, in the Honore building, Chicago, on the sixth (6th) day of July, A. D. 1887, I was attended, on said last-named day and on certain other days subsequent thereto, by Mr. George Willard, solicitor for said intervening petitioner, The North Chicago Rolling Mill Company, and by
470 Mr. Otis K. Hutchinson, solicitor for the St. Louis Ore and Steel Company, and by Henry C. Brown, James K. Walden, O. W. Potter, Henry C. Dolph, and Oliver L. Garrison, witnesses, whose testimony was taken before me, they having each been duly sworn, and I return herewith said testimony, together with the documents and exhibits offered in evidence before me in connection therewith.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, November 24, A. D. 1888.

471 ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE AND STEEL COMPANY.

Testimony taken before Henry W. Bishop, master in chancery of said court, on Wednesday, the 6th day of July, 1887.

Present: Mr. Willard, Mr. Hutchinson.

Mr. WILLARD: I offer in evidence the original of the contracts between Cherrie & Company and the petitioner, The North Chicago Rolling Mill Company and between the St. Louis Ore and Steel Company and the petitioner. I also present notice served on opposing counsel to produce original letters and documents.

(Contracts same as shown in the intervening petition.)
(The ore contract is objected to as irrelevant.)

Mr. WILLARD: I will also offer a few letters between Cherrie & Co. and the rolling mill company.

Letter from Cherrie & Co. to O. W. Potter, dated September 21, 1883.

Letter from O. W. Potter to Cherrie & Co. dated September 22, 1883.

Letter, Cherrie & Co. to O. W. Potter, dated September 24, 1883.

Letter from Cherrie & Co. to O. W. Potter, dated December 24, 1883.

Letter from Cherrie & Co. to O. W. Potter, dated January 1, 1884.

Mr. HUTCHINSON: It is agreed that one general objection to the correspondence shall be sufficient to raise all questions as to their competency and relevancy.

472 Letter from J. C. Parkes to Cherrie & Co., dated January 14, 1884.

Letter from Cherrie & Co. to Mr. Parkes, dated January 14, 1884.

Letter from O. L. Garrison to O. W. Potter, dated January 19, 1884.

HARVEY C. BROWN, a witness on behalf of the petitioner, having been duly sworn, was examined by Mr. WILLARD, and testified as follows:

Q. What is your name?
A. Harvey C. Brown.
Q. Where is your residence?
A. Chicago.
Q. And your occupation?
A. Clerk.
Q. For whom?
A. The Chicago Rolling Mill Company.
Q. Here is a copy of a letter which I show you and ask you where the original of that letter is.
A. I suppose it is in the hands of Cherrie & Co.

Q. Do you know whether it is in the hands of the North Chicago Rolling Mill Company?

A. These are letters that the North Chicago Rolling Mill Company wrote to Cherrie & Co. and the St. Louis Ore and Steel Company. This is a letter to Cherrie & Co., and of course a copy of it is in our letter book, the original copy.

Mr. HUTCHINSON: These copies may go in subject to be verified by the production of the letter-press copy books:

Letter from John C. Parkes to Cherrie & Co., dated January 23, 1884.

473 Letter from John C. Parkes to Cherrie & Co., dated January 23, 1884.

Letter from O. L. Garrison to John C. Parkes, dated January 28, 1884.

Letter from Cherrie & Co. to John C. Parkes, January 29, 1884.

Copy of letter from John C. Parkes to Cherrie & Co., January 29, 1884.

Copy telegram, O. L. Garrison to J. C. Parkes, January 29, 1884.

Letter, O. L. Garrison to J. C. Parkes, January 29, 1884.

Letter, O. L. Garrison to J. C. Parkes, February 5, 1884.

Copy letter, J. C. Parkes to O. L. Garrison, January 30, 1884.

Copy letter, O. L. Garrison to J. C. Parkes, February 5, 1884.

Copy letter, J. C. Parkes to O. L. Garrison, February 7, 1884.

Letter, O. L. Garrison to J. C. Parkes, February 8, 1884.

Letter, E. A. Hitchcock to J. C. Parkes, February 11, 1884.

Copy of letter, J. C. Parkes to O. L. Garrison, February 12, 1884.

Letter, O. L. Garrison to J. C. Parkes, February 15, 1884.

Letter, O. L. Garrison to J. C. Parkes, February 16, 1884.

Copy telegram, J. C. Parkes to O. L. Garrison, February 27, 1884.

Letter, O. L. Garrison to J. C. Parkes, February 28, 1884.

474 Letter, O. L. Garrison to J. C. Parkes, February 28, 1884.

Copy letter, J. C. Parkes to O. L. Garrison, February 29, 1884.

Copy telegram, J. C. Parkes to O. L. Garrison, March 1, 1884.

Letter, O. L. Garrison to J. C. Parkes, March 1, 1884.

Copy telegram, J. C. Parkes to O. L. Garrison, March 6, 1884.

Copy telegram, O. L. Garrison to J. C. Parkes, March 7, 1884.

Copy letter, O. W. Potter to Cherrie & Co., April 28, 1884.

Letter, Cherrie & Co. to O. W. Potter, May 6, 1884.

Letter, O. L. Garrison to Cherrie & Co., May 6, 1884.

Copy letter, J. C. Parkes to Cherrie & Co., May 6, 1884.

Letter, O. L. Garrison to J. C. Parkes, May 8, 1884.

Letter, O. L. Garrison to J. C. Parkes, May 8, 1884.

Copy telegram, J. C. Parkes to O. L. Garrison, May 8, 1884.

Copy letter, J. C. Parkes to Cherrie & Co., May 10, 1884.

Letter, Cherrie & Co. to J. C. Parkes, May 12, 1884.

Letter, O. L. Garrison to J. C. Parkes, May 13, 1884.

Copy letter, J. C. Parkes to Cherrie & Co., May 14, 1884.

Letter, Cherrie & Co. to J. C. Parkes, May 14, 1884.

Letter, Cherrie & Co. to O. W. Potter, May 14, 1884.
Copy letter, O. W. Potter to Cherrie & Co., May 14, 1884.
475 Telegram, O. L. Garrison to O. W. Potter, May 14, 1884.
Copy telegram, O. W. Potter to O. L. Garrison, May 14, 1884.
Copy telegram, O. L. Garrison to O. L. Potter, May 14, 1884.
Letter, Cherrie & Co. to O. W. Potter, May 15, 1884.
Letter, O. L. Garrison to O. W. Potter, May 15, 1884.
Letter, J. C. Parkes to O. L. Garrison, May 16, 1884.
Letter, O. L. Garrison to J. C. Parkes, May 17, 1884.
Copy of letter, O. W. Potter to O. L. Garrison, May 21, 1884.
Letter, O. L. Garrison to O. W. Potter, May 29, 1884.
Copy letter, J. C. Parkes to Cherrie & Co., May 31, 1884.
Letter, Cherrie & Co. to J. C. Parkes, June 1, 1884.
Copy telegram, O. W. Potter to St. Louis Ore and Steel Co., June 2, 1884.
Copy letter, O. L. Garrison to O. W. Potter, June 3, 1884.
Copy letter, J. C. Parkes to Cherrie & Co., June 5, 1884.
Letter, Cherrie & Co. to J. C. Parkes, June 6, 1884.
Letter, O. L. Garrison to J. C. Parkes, June 10, 1884.
Copy letter, Parks to Cherrie & Co., dated June 12, 1884.
Copy letter, J. C. Parkes to O. L. Garrison, June 12, 1884.
Letter, O. L. Garrison to J. C. Parkes, June 13, 1884.
Copy letter, J. C. Parkes to O. L. Garrison, June 14, 1884.
476 Copy letter O. L. Garrison to J. C. Parkes, June 14, 1884.
Copy letter J. C. Parkes to O. L. Garrison, June 16, 1884.
Letter O. L. Garrison to J. C. Parkes, June 17, 1884.
Letter O. L. Garrison to J. C. Parkes, June 23, 1884.
Copy letter J. C. Parkes to O. L. Garrison, June 24, 1884.
Copy letter J. C. Parkes to Cherrie & Co., June 26, 1884.
Copy letter O. L. Garrison to R. J. Lackland, president Boatmen's savings bank, July 5th.
Letter O. L. Garrison to O. W. Potter, July 5th.
Letter E. A. Hitchcock to O. W. Potter, July 11, 1884.
Letter O. L. Garrison to O. W. Potter, July 12th.
Copy telegram Richard C. Hannah to O. L. Garrison, July 14th.
Copy letter O. L. Garrison to R. C. Hannah, July 24th.
Copy telegram E. A. Hitchcock to O. W. Potter, July 25th.
Copy telegram O. W. Potter to E. A. Hitchcock, July 25th.
Copy letter William H. Thompson, cashier Boatmen's savings bank, to O. W. Potter, July 24th.
Copy letter O. W. Potter to W. H. Thompson, cashier Boatman's savings bank, July 25, 1884.
Telegram E. A. Hitchcock to O. W. Potter, July 25th.
Copy telegram O. W. Potter to E. A. Hitchcock, July 25th.
Letter E. A. Hitchcock to O. W. Potter, with inclosures, July 26, 1884.
Copy letter O. L. Garrison to O. W. Potter, July 26th.
477 Letter O. L. Garrison to O. W. Potter, July 29th.
Copy telegram O. W. Potter to E. A. Hitchcock, July 29th.
Copy telegram O. W. Potter to E. A. Hitchcock, July 30th.

Copy telegram O. W. Potter to E. A. Hitchcock, July 30th.
Telegram E. A. Hitchcock to O. W. Potter, July 30th.
Telegram E. A. Hitchcock to O. W. Potter, July 30th.
Letter O. L. Garrison to O. W. Potter, July 31st.
Telegram E. A. Hitchcock to O. W. Potter, July 31st.
Telegram O. W. Potter to E. A. Hitchcock, July 31st.
Copy letter O. W. Potter to E. A. Hitchcock, July 31st.
Letter, E. A. Hitchcock to O. W. Potter, August 1, 1884.
Copy telegram, O. W. Potter to E. A. Hitchcock, August 2, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 2, 1884.
Telegram, O. W. Potter to E. A. Hitchcock, August 4, 1884.
Letter E. A. Hitchcock to O. W. Potter, August 4th.
Copy letter, O. W. Potter to E. A. Hitchcock, August 6th, 1884.
Copy letter, O. L. Garrison to R. C. Hannah, August 12, 1884.
Copy letter, O. L. Garrison to R. C. Hannah, August 22, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 12, 1884.
Copy letter, O. W. Potter to E. A. Hitchcock, August 13, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 14, 1884.
478 Letter, O. L. Garrison to O. W. Potter, August 15, 1884.
Copy letter, O. W. Potter to O. L. Garrison, August 19, 1884.
Copy letter, O. W. Potter to E. A. Hitchcock, August 19, 1884.
Letter, O. L. Garrison to O. W. Potter, August 21, 1884.
Telegram, O. L. Garrison to O. W. Potter, August 26, 1884.
Copy telegram, O. W. Potter to O. L. Garrison, August 26, 1884.
Copy telegram, O. L. Garrison to O. W. Potter, August 26, 1884.
Copy telegram, O. W. Potter to Garrison, August 26, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 26, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 27, 1884.
Copy telegram, O. W. Potter to E. A. Hitchcock, August 28, 1884.
Letter, E. A. Hitchcock to O. W. Potter, August 29, 1884.
Copy letter, O. L. Garrison to R. C. Hannah, September 1, 1884.
Copy telegram O. W. Potter to E. A. Hitchcock, September 1, 1884.
Letter E. A. Hitchcock to O. W. Potter, September 1, 1884.
Copy of letter J. C. Parkes to E. A. Hitchcock, September 2, 1884.
Letter O. L. Garrison to R. C. Hannah, September 2, 1884.
479 Letter E. A. Hitchcock to O. W. Potter, September 3, 1884.
Letter O. L. Garrison to R. C. Hannah, September 6, 1884.
Letter O. L. Garrison to R. C. Hannah, September 17, 1884.
Telegram O. L. Garrison to R. C. Hannah, September 18, 1884.
Copy letter O. W. Potter to E. A. Hitchcock, September 19, 1884.
Letter E. A. Hitchcock to O. W. Potter, September 22, 1884.
Copy letter O. W. Potter to E. A. Hitchcock, September 23, 1884.
Letter E. A. Hitchcock to O. W. Potter, September 24, 1884.
Copy letter O. W. Potter to E. A. Hitchcock, September 25, 1884.
Letter E. A. Hitchcock to O. W. Potter, September 26, 1884.

Copy of letter O. W. Potter to E. A. Hitchcock, September 27, 1884.

Copy of telegram O. W. Potter to E. A. Hitchcock, October 9, 1884.

Copy of telegram J. C. Parkes to E. A. Hitchcock, October 10, 1884.

Letter E. A. Hitchcock to O. W. Potter, October 10, 1884.

Letter O. L. Garrison to R. C. Hannah, with inclosure, October 31, 1884.

480 OLYPHANT *vs.* ST. LOUIS ORE & STEEL CO. } Intervening Petition of North Chicago Rolling Mill Co.

Testimony taken before Henry W. Bishop, master in chancery of said court.

Friday, the 15th day of July, A. D. 1887.—Present: Mr. Hutchinson, Mr. Willard.

O. W. POTTER, a witness on behalf of the petitioner, being first duly sworn, was examined in chief by Mr. WILLARD, and deposes and says as follows:

Q. Mr. Potter, you are the president of the petitioner, The North Chicago Rolling Mill Company, are you not?

A. I am.

Q. And have been for how many years, about?

A. I think in this present position some eight or ten years, I believe it is, I don't remember exactly.

Q. As such president you have been constantly familiar with its business in all its details?

A. Substantially so, yes, sir.

Q. Do you know the St. Louis Ore and Steel Company and its officers?

A. I do know of them, yes.

Q. During what length of time, about?

A. For several years, I don't remember exactly.

Q. Do you know of the firm of Cherrie & Co., doing business in Chicago?

A. I do know of them, yes.

Q. Have you a knowledge of the rail contract, so called, which has been put in evidence in this case, the rail contract with the St. Louis Ore & Steel Company?

481 A. Yes, I have knowledge of such a contract.

Q. Have you also knowledge of the "ore contract," so called, with Cherry & Co., put in evidence?

A. I have.

Q. Were you informed of the progress of the performance of those two contracts as far as it went by the respective parties?

A. In a general way, yes.

Q. Can you estimate the amount of rails which were not received by the St. Louis Ore & Steel Company under the rail contract?

A. It was I believe some ten or eleven thousand tons. It was in the testimony; I don't remember exactly. You mean that were undelivered?

Q. Yes. Do you know about what time the receipt of rails on the part of the St. Louis Ore and Steel Company ceased?

A. That has, in a measure, gone out of my mind. I think in June or July, somewhere there. I would not pretend to be definite as to dates.

Q. How was the petitioner, The North Chicago Rolling Mill Company, situated at that time with reference to its ability or non-ability to manufacture and deliver the entire amount of rails called for under that contract?

A. It was ready, willing and prepared to make all deliveries as stipulated in the contract, and at the time stipulated.

Q. Was any of the material which was necessary for the manufacture of those rails obtained from the St. Louis Ore and Steel Company?

A. Well, we were buying both ore and pig metal which practically came from that company, but some of it we had through Cherrie & Co.; but the St. Louis Ore and Steel Company were the parties furnishing it.

482 Q. Had the purchase of that material, the ore and pig metal, anything to do with reference to the making of the "rail contracts"?

A. I could only answer that in a general way: That, in the purchase of our materials—of course we were making a great many rails other than those, but the materials we purchased from them, some of which did go in their rails—there was substantially an interchange of business there that we believed might result to their advantage, and possibly to ours, in our buying ore and pig metal from them and they, in turn, giving us orders for rails. That this was a specific purchase I don't know that I would say, but that in a general way they did have some relation to each other.

Q. As a rule, do manufactories of the kind of the North Chicago Rolling Mill Company make steel rails in advance of any contract for their sale generally?

(Question objected to as incompetent and irrelevant.)

A. Generally, they do not; it has never been our custom to do it; it is not done generally.

Q. What was the condition of the rail market throughout the year 1884?

A. If I remember correctly, it was a declining market.

Q. Beginning in the fore part of the year and continuing throughout the year?

A. Yes, and into 1885.

Q. About what was the decline during the year, the aggregate?

A. That I have not in mind now. I could not answer that without referring to the testimony given before.

Q. Could you ascertain that, Mr. Potter, later on?

A. I could through our books, yes.

483 Q. You may state whether the value of pig metal and metallic ore such as is used in the manufacture of Bess-mer steel rails is affected by the demand and market value of such rails?

A. In our history that has been the case; a sharp decline in rails is the same in raw material, and the same is true in an advance.

Q. Did you have any material left over at the end of the year 1884, which would have gone into the manufacture of rails under this contract if all of the rails provided for in that contract had been taken?

Q. Yes.

A. What was the value of those materials at the end of the year compared with what they were worth if they could have been put into rails at the contract price provided for in this rail contract?

(Objected to as immaterial and irrelevant.)

A. I could answer that by referring to a report or statement that was made at my instigation practically under date of January 26, 1885, which shows the amount to have been $28,390.16. When this statement was made out it was made out to the best of our knowledge and belief as showing the value of materials that were carried under the contract and were not disposed of, but were sold, put in for rails at a reduced price.

Q. What was the reduced price?

A. $29.50; a difference of $5.50 a ton.

Q. On the materials?

A. Yes.

Q. If I understand you then, Mr. Potter, the difference in the price of materials at the expiration of this rail contract was between five and six dollars less per ton than they were worth to be put into rails at the price named in the rail contract?

484 A. The difference between our rail contract with the St. Louis Ore and Steel Company, and the price at which we sold rails in which this material went instead of going into the St. Louis Ore and Steel Company's rails, was $5.50 a ton, there was that depreciation in the rails, that we sold.

Q. Was that the disposition which was made of the material left there?

A. Substantially so, yes.

Q. Was that the best purpose for which you could use it?

A. It was.

Q. Have you made a calculation of the amount of damage to the petitioner, The North Chicago Rolling Mill Company, by reason of the non-fulfillment on the part of the St. Louis Ore and Steel Company of this rail contract?

A. Yes, I believe this is it that is before you.

Q. What is the total amount of damage as shown by that paper which you have?

A. $28,390.16.

Q. You may state briefly how you reach that result.

A. Well, it is substantially reached in this way: the value of our ores was $11.02 a ton, the old price in a ton of rails, which is $35

against $29.50, the new price, *pro rata*, which gives 86½ cents per ton on 21,236 tons of ore that would have been required to have made the balance of the rails under this contract; the depreciation or loss of ore being $18,369.14. The cost of remelting 4,000 tons of pig-iron which under the old contract could have been used in a molten condition, and the remelting of which cost us $1.00 a ton, or $4,000. Then the amount of spiegeleisen used in 10,618
485 tons of rail at a loss of 39 cents a ton on each ton of rails would be $4,141.02; the depreciation of 2,000 tons of coke at 94 cents a ton was $1,880, which I believe makes the total.

Q. Do you understand the basis of the figuring as set forth in this bill to be true, Mr. Potter?

A. I do.

Mr. WILLARD: I will offer in evidence the bill of items referred to by the witness as constituting the damage to the petitioner under the contract in evidence. Hereto attached marked "Exhibit A 1."

Said Exhibit A 1 is as follows:

CHICAGO, *Jan.* 26, 1885.

Figuring the *pro rata* of loss on the difference between rails @ $35 per ton and rails @ $29.50 per ton or $5.50 per ton:

Ore at $11.02 old price in ton of rails against $9.29 new price, *pro rata* gives 86½ cents per ton on 21,236 tons ore or	$18,369 14
Cost of remelting 4,000 tons of pig-iron which would have been used in a melted state @ $1	4,000
9 % of 20 % spiegel or its equivalent in a ton of rails makes the spiegel cost $2.47½ a ton with spiegel at $27.50 per ton; 29½-35 of this equals 2.08½ cents realized for the spiegel in rails @ $29.50 per ton or a loss of 39 cents per ton on each ton of rails, and on 10,618 tons equals	4,141 02
2,000 tons of coke on hand which can now be replaced at a reduction of 94 cents per ton	1,880 00
Total damage	$28,390 16

486 The first item is figured 29½-35 of $11.02 which gives $9.29, the value of ore in $29.50 rails, being a difference of $1.73 or 86½ cents on each ton of ore.

Q. Are there any other elements of damage, Mr. Potter, to the company which you have not included in that bill?

A. Well, I would answer that by saying, yes; there was an interruption to our business there and a loss of time. I think we were delayed fully a month at the time in which we could have made those rails, but there has been nothing considered in the damages except the actual loss in material on hand.

Q. You then make no claim outside of the bill as it was presented?

A. No, sir; we have made no such claim.

Q. What was the difference in the price of rails when this contract was made, and the time when it expired?

A. We made sales at 29½, which was really the depreciation in the value of the rails between the time the contract was made, and the contracts we took to put this material into rails, or $5.50 per ton.

JAMES K. WALDEN, having been duly sworn, was examined by Mr. WILLARD and testified as follows:

Q. Mr. Walden, you are the accountant for the petitioner, The North Chicago Rolling Mill Company?

A. Yes.

Q. And have been for how many years?

A. About thirteen years.

Q. What is the general nature of your duties as such accountant?

A. To keep the accounts of the company.

487 Q. Can you state when the St. Louis Ore and Steel Company first rendered to the petitioner an account or invoice for ore and pig metal delivered?

A. That account of October 31st was received about November 1, 1884.

Q. Have you that statement?

A. Yes.

(It is agreed that the account shown the witness is the same one which accompanied the letter of Mr. Garrison to Mr. Hannah, dated October 31, 1884, heretofore put in evidence.)

Q. Do you know of any formal statements of account being rendered to the St. Louis Ore and Steel Company by the petitioner, The North Chicago Rolling Mill Company?

A. Yes.

Q. What are they?

A. The one rendered July 2, 1884, and the other one January 15, 1885.

Q. Has the account rendered July 2, 1884, been paid otherwise than by being charged in the account?

A. No, sir.

Q. Do you know whether the petitioner, The North Chicago Rolling Mill Company, paid any freight charges on pig metal and ore which was properly chargeable to the St. Louis Ore and Steel Company, or which were charged to them?

A. Yes.

Q. Do you know how much that was?

A. It was $4,839.10 on ore, and $1,483.11 on pig-iron, making a total of $6,322.21.

488 Q. You have charged against the St. Louis Ore and Steel Company, in favor of the North Chicago Rolling Mill Company, an item of $458.66, shortage on account of metallic iron in the ore received from the St. Louis Ore and Steel Company?

A. Yes, sir.

Q. Is that correct?
A. Yes.
Q. Do you know about the analysis of the ore?
A. I don't remember, now.

Cross-examination by Mr. HUTCHINSON:

Q. How do you know there was a shortage of metallic iron in the ore?
A. The contract guaranteed the ore to contain a certain percentage of metallic iron, and the chemist reported a certain percentage short; we figured the difference from our chemist's analysis.
Q. You do not know of your own personal knowledge?
A. No, sir.
Q. You are not a chemist, and did not analyze it?
A. No, sir.
Q. You make the statement from the report of the chemist?
A. Yes.
Q. That is all you know about it?
A. Yes.
Q. Was the statement of the North Chicago Rolling Mill Company of the account between it and the St. Louis Ore and Steel Company furnished the latter company on July 2, 1884?
A. Yes, it was mailed on that day.
Q. How do you know that?
A. Because I made it out myself, and mailed it in the regular course of business. It was made out with the other statements.
489 Q. Have you any recollection of sending this account?
A. Yes.
Q. This identical account?
A. No, I don't recollect that it was that identical account, but I am positive I sent them a statement similar to that.
Q. On July 2, 1884?
A. Yes; it never takes us over two days to make statements against parties to whom we have sold rails. We might have made it out on the second day after we commenced making out statements, but it was mailed in due course as the accounts came on the books.
Q. It might have been later?
A. Not to exceed one day later.
Q. The statement of the account of the North Chicago Rolling Mill Company showing the accounts between that company and the St. Louis Ore and Steel Company dated January 15, 1885, was furnished the St. Louis Ore and Steel Company about that date?
A. I could not swear as to that.
Q. Was it sent to them at all?
A. The one dated January 15, 1885?
Q. Yes.
A. Well, I would not swear that I mailed that.
Q. Why did you not mail it, if you did not?
A. I think we were not to send the statement at that time.

Q. But this was made out at that time?

A. Yes.

Q. Is this a correct statement of the account between the two companies?

A. That is correct as far as it goes; we claim an offset of little over $28,000 against that.

490 Q. There is no offset shown on this statement?

A. No.

Q. Was there any later statement than that dated January 15, 1885?

A. I have made several statements, but I don't remember. I think, perhaps, I have made some since that date, just copies that would be wanted from time to time.

Q. This shows all the transactions between the parties up to that time and all transactions between the parties up to the present time, so far as you know?

A. That shows the transactions after July 4th.

Q. All the transactions during the year 1885, say or *or* during the year 1884?

A. We had shipped them steel rails and had received ore previous to the commencement of this account; this shows the balance that was unsettled.

Q. From July, 1884, to January 15, 1885, this was a correct statement of the account?

A. This was the balance of the account, balance of ore and pig-iron received from them and balance of rails shipped to their account.

Mr. WILLARD: This bill of January 15, 1885, is correct, I understand, so far as it goes with reference to the material which passed between the two companies received by the one and delivered by the other?

A. Yes.

Q. But is incomplete in having no reference to the amount claimed for damage?

A. Yes, sir.

Q. Have you the original bill of items constituting the shortage in metallic iron?

A. Yes.

Mr. WILLARD: I offer in evidence statement from the
491 North Chicago Rolling Mill Company to St. Louis Ore and Steel Company dated July 2, 1884, hereto attached, marked "Exhibit A 2."

Said Exhibit A 2 is as follows:

"EXHIBIT A 2."

CHICAGO, ILL., *July* 2, 1884.

St. Louis Ore & Steel Co., St. Louis, Mo., to North Chicago Rolling Mill Co.

Statement.

1884.				
June 16.	To 12 1120	2240 tons No. 1 steel rail, @ $35 --		$437 50
23.	" 37 1120	2240 " " " " " " --		1,312 50
"	" 565 740	2240 " " " " " " --		19,786 56
	Total ----------			$21,536 56

Ac. due July 10, '84.

Also statement from St. Louis Ore and Steel Company dated October 31, 1884, to North Chicago rolling mill, hereto attached, marked "Exhibit A 3."

Said Exhibit A 3 is as follows:

"EXHIBIT A 3."

Statement.

(Subject to approval of U. S. court for the eastern district of Missouri.)

ST. LOUIS, MO., *Oct.* 31, 1884.

North Chicago Rolling Mill Co. in account with St. Louis Ore & Steel Company.

1884.			
July 21.	To ore, sheet No. 2, 1169 2080 | 2240 tons, @ $5.25 ----------		$6,142 13
" "	To do., sheet No. 3, 3979 1990 | 2240 tons, @ $5.25 ----------		20,894 41
" "	To metal, sheet No. 5, 975 60 | tons, @ $18.00		17,550 47
" "	" do., " " 5, 13 1416 | " car 9646, @ $18.75 ----------		255 45
			$44,842 46

492 CR.

July 21.	By voucher, steel rails ----------	$21,536 56	
" "	" fr't on ore, 5149 1830 | tons, @ $1.50 ----------	7,724 72	
" "	By fr't on metal, sheet No. 5 ----------	1,483 11	
			$30,744 39
	Balance due St. Louis Ore & Steel Co. ----------		$14,098 07

E. & O. E.

NOTE.—On sheet No. 5 there is a difference of 30 lbs. on car No. 18535, having been originally reported to us 31,060 lbs.

Credit for freight on ore is supposed to be the actual amount paid on tonnage reported.

Stamped: Received Nov. 1, 1884. R. C. Hannah, sec'y.

Also itemized bill North Chicago Rolling Mill Company dated Chicago, January 15, 1885, in account with St. Louis Ore and Steel Company, hereto attached, marked "Exhibit A 4."

Said Exhibit A 4 is as follows:

CHICAGO, *Jan'y* 15, 1885.

St. Louis Ore & Steel Co. in account with North Chicago Rolling Mill Co.

1884.	CR.		
July.	By 5163 2200 | 2240 tons ore, @ $5.25 per ton	$27,110 90	
"	By 975 60 | 2268 tons pig metal, @ $18.00 per ton	17,550 47	
"	By 13 1416 | 2268 tons pig metal, @ $18.75 per ton, ac. car 9646	225 45	
			$44,916 82
1884.	DR.		
June.	To 615 740 | 2240 tons No. 1 steel rails, @ $35.00 per ton	$21,536 56	
"	To balance of freight charges on pig metal	1,483 11	
Aug.	To balance of freight charges on ore	4,839 10	
1885.			
Jan'y.	To shortage in ac. of metallic iron, as per bill	458 66	
			$28,317 43
	Balance		$16,599 39

E. & O. E.

Mem. of amount that would be due if the rolling mill Co. must pay the Wabash railway freight.

Balance as above	$16,599 39
Deduct freight claimed by W., St. L. & P. R'y	2,900 72
Balance which would be payable to St. L. O. & S. Co.	$13,698 67

Also memorandum of analysis or bill for shortage, dated January 14, 1885, hereto attached, marked "Exhibit A 5."

493 Said Exhibit A 5 is as follows:

CHICAGO, ILL., *Jan.* 14, 1885.

St. Louis Ore and Steel Co., St. Louis, Mo.—invoice No. 12258—to North Chicago Rolling Mill Co.

For allowance on acc't shortage in percentage of metallic iron in 5,163$\frac{2200}{2240}$ tons Pilot Knob ore delivered between July 4, '84, and October 15, '84, under contract dated Dec. 26, '83, @ .08$\frac{882}{1000}$ $458 66

Mem. of Analyses.

Samples taken.	Cars.	% metallic iron.
July 7–9	29 × 57$\frac{94}{}$ =	1,680$\frac{26}{}$
22–23–24	52 × 59$\frac{74}{}$ =	3,106$\frac{48}{}$
24 & 26	45 × 59$\frac{08}{}$ =	2,658$\frac{60}{}$
Aug. 9 & 12	42 × 58$\frac{67}{}$ =	2,464$\frac{14}{}$
	168	9,909$\frac{48}{}$

Making average % metallic iron 58,985

Contract requires ore to be 60 %.

Average as above ..... 58$\frac{985}{}$	
Price of ore at 60 %	$5 25
" " 58$\frac{985}{}$	5 16$\frac{1}{8}$
Difference	.08$\frac{882}{}$

Above analysis made by—

R. W. LODGE, *Chemist.*

Mr. H. C. BROWN, being recalled, testified as follows:

Mr. WILLARD: Have you the original letter-press copies of letters from the North Chicago Rolling Mill Company to Cherrie & Co., which were introduced in evidence here the other day?

494 A. I have.

Mr. WILLARD: We offer those letter-press copies in evidence in place of the copies of those letter-press copies presented at the last hearing.

Mr. HUTCHINSON: We object to the copies, on the ground that the originals ought to be produced.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY.

Testimony taken Friday, the second day of December, A. D. 1887, before Hon. Henry W. Bishop, master in chancery of said court.

Present. Mr. Hutchinson, Mr. Willard.

O. W. POTTER, witness on behalf of the intervening petitioner for the North Chicago Rolling Mill Company, being recalled, was examined in chief by Mr. WILLARD, and deposes and says as follows:

Q. You know, I suppose, that Cherrie & Company failed and suspended their business in the year, 1884?
A. I remember of their failure, yes.
Q. Was the ore contract with them, or between them and your company, completed at the time of that suspension?
A. Not entirely; no, sir.
Q. Was it subsequently carried out on both sides?
A. It was.
Q. Who carried it out on the part of Cherrie & Company?
A. The St. Louis Ore and Steel Company.
Q. Did they assume to do that as a matter of right,
495 or was it done through some order of the county court, so far as you know?
A. They assumed it as their own right, one of their firm was in Chicago relative to this matter of Cherrie's, and came to our office and said to us, "We will assume and carry out this ore contract;" it was either Hitchcock or Garrison, I don't remember which, I am not sure but both, it was carried out by them.

Cross-examination by Mr. HUTCHINSON:

Q. Did you individually, Mr. Potter, make the arrangement for carrying out that contract?
A. You mean the original contract with Cherrie & Company?
Q. Yes.
A. Yes, that is the substance of it I arranged, but the details of the arrangement were made with either our secretary, or general manager, but the substance of it was made by me.
Q. The arrangement with the St. Louis Ore & Steel Company?
A. Yes, that was made by—I should say that was made by myself in person, I know, in substance, it was arranged by me, there was a portion of it unfilled, and there was another part unfilled between them, and this agreement was made.
Q. Did the agreement between you and Mr. Hitchcock, or Garrison, whichever it was, relate specially to the carrying out of the Cherrie contract, or was it a new contract?
A. It related specially to the completing of the Cherrie contract.
Q. It was not then an independent contract as you understood it?

496 A. It was not a separate contract, but it was the completing of the contract we had with Cherrie & Company for the delivery of the ore.

Q. What is your best recollection, Mr. Potter, as to the person with whom you made this arrangement, was it Mr. Garrison or Mr. Hitchcock?

A. I think it was made first with Mr. Garrison, I will not be certain, but my judgment is it was made really with both of them. I think first with Mr. Garrison and then it was confirmed, it seems to me, by correspondence, but I am not sure, verbally perhaps. I think I had a conversation with both of them relative to it.

Q. You don't recollect Mr. Garrison's saying to you that his arrangement with you had no reference, or any connection with the contract which you had with Cherrie & Company?

A. No, sir; I don't remember that, it was simply that they would carry out, so far as we were concerned, they would carry out the unfilled contract for the delivery of the ore we had with Cherrie & Co. that their failure would not affect that in any way.

Q. You assented to that?

A. Yes, and the contract was carried out and the ore delivered, and a settlement made with them for the rest of it.

Mr. WILLARD: That was in 1884?

A. I won't pretend to say just the year, it was about the 4th of July, Cherrie failed.

497 HENRY C. DOLPH, a witness on behalf of the intervening petitioner, having been duly sworn, was examined by Mr. WILLARD, and deposes and says as follows:

Q. What is your name?

A. Henry C. Dolph.

Q. What, if any, business relations did you have with Cherrie & Co. in 1884 and prior to that time?

A. Well, I was clerk in the office, cashier; just previous to the failure, I was up North; I came to Chicago just the day before the failure.

Q. Were you connected with the firm during the time its affairs were being administered by the county court?

A. Yes.

Q. Have you the custody of any of the correspondence between Cherrie & Co. and the North Chicago Rolling Mill Company in 1884 and prior, with reference to the ore contract, so called between Cherrie & Co., and the North Chicago Rolling Mill Company?

A. I think I have it all.

Q. I will ask you whether you have the original letter dated January 14, 1884, from Mr. Parkes to Cherrie & Co.; if so, will you please produce it?

(Letter produced.)

Q. Letter from Mr. Parkes to the same, dated January 23, 1884?

(Letter produced.)

Q. Letter from Mr. Parkes to the same, dated January 23, 1884

(Letter produced.)

Q. Letter from the same to the same, dated January 29, 1884?

498 (Letter produced.)

Q. Letter from O. W. Potter to Cherrie & Co., dated April 28, 1884?

(Letter produced.)

Q. Letter from Mr. Garrison to R. M. Cherrie, dated May 6, 1884.

(Letter produced.)

Q. Letter from Parkes to Cherrie & Co., dated May 6, 1884.

(Letter produced.)

Q. Letter from the same to the same, dated May 10, 1884.

(Letter produced.)

Q. Letter from the same to the same, dated May 14, 1884.

(Letter produced.)

Q. Letter from Mr. Potter to Cherrie & Co., dated May 14, 1884.

(Letter produced.)

Q. Letter from Mr. Parkes to Cherrie & Co., dated May 31, 1884.

(Letter produced.)

Q. Letter from same to same, dated June 5, 1884.

(Letter produced.)

Q. Letter — same to same dated June 12, 1884.

(Letter produced.)

Q. Letter from same to same, dated June 26, 1884.

(Letter produced.)

The intervening petitioner, The North Chicago Rolling Mill Company, presents said letters, and each of them in evidence, and asks that the same be copied by the master, and the originals returned to the witness, who is the proper custodian of the papers.

499 Mr. WILLARD: The originals here produced have been heretofore introduced in evidence by letter-press copies under objection by counsel for the St. Louis Ore and Steel Company.

Mr. HUTCHINSON: It is understood that the copies and these letters go in subject to any objection.

It is stipulated that the letters, purporting to be the original letters referred to in the testimony between the parties, which are to-day produced in evidence, subject to objection, may be retained by the party producing them with the understanding that they shall be produced upon the hearing if desired.

Mr. WILLARD: I offer in evidence the pleadings and orders of court entered in the garnishee proceedings of The St. Louis Ore and Steel Company *vs.* The North Chicago Rolling Mill Company for use of The Joliet Steel Company, and The Same *vs.* The Same for use of The Iron Mountain Company.

Mr. HUT-HINSON: This is objected to on account of incompetency and irrelevancy.

(Copy.)

OLIPHANT
vs.
THE ST. LOUIS ORE & STEEL CO.

Testimony taken before Henry W. Bishop, master in chancery of said court, on Saturday, the 14th day of January, 1888.

Present: Mr. Hutchinson, Mr. Willard.

OLIVER L. GARRISON, a witness on behalf of the St. Louis Ore & Steel Company, being first duly sworn, was examined in chief by Mr. HUTCHINSON, and deposes and says as follows:

500 Q. What is your name, age and residence?

A. Oliver L. Garrison; age, thirty-nine; residence, St. Louis, Missouri.

Q. What is your business, Mr. Garrison?

A. Secretary and treasurer of the St. Louis Ore & Steel Company.

Q. How long have you occupied that position?

A. Since January, 1882.

Q. Do you know the North Chicago Rolling Mill Company of Chicago?

A. I know the officers, most of them, that are connected with it.

Q. How long have you known them?

A. About ten or twelve years.

Q. State whether the St. Louis Ore and Steel Company and the North Chicago Rolling Mill Company in the early part of the year 1884, or during the year 1884 had mutual dealings?

A. They had.

Q. Do you know of the contract made between the North Chicago Rolling Mill Company and the St. Louis Ore and Steel Company, dated on the 1st day of December, I think, 1883?

A. There was such a contract made for steel rails.

Q. It is called the "rail contract"?

A. Yes.

Q. Did your company, during the early part of the year 1884, take rails under that contract?

A. Yes, sir.

Q. Did your company, during the first half of the year 1884, during July of that year, sell to the North Chicago Rolling Mill Company any pig metal?

A. We did.

501 Q. How was that pig metal to be paid for, on what terms was the sale made?

A. There was several contracts made during that period of time that you speak of, some of the metal was to be paid for on the 15th of the month following delivery. Other lots, or a lot, was to be paid for in cash as the iron was weighed up and delivered at the mill of the North Chicago Rolling Mill Company at the rate of $18 per ton, this particular lot of iron that I refer to.

Q. The iron that was sold at $18 per ton was to be paid for in cash was it?

A. Yes, sir.

Q. Can you state, Mr. Garrison, the condition of the accounts between the two companies, the St. Louis Ore & Steel Company and the North Chicago Rolling Mill Company on the 10th of July, 1884?

A. Yes, I can; on July 10, 1884, we owed the North Chicago Rolling Mill Company $21,536.56 for steel rails delivered during the month of June. The North Chicago Rolling Mill Company owed our company for pig-iron delivered during the month of June, and prior to the 9th day of July, with the 8th inclusive, as their reports of iron weighed at their mill show about $17,550.47. There was a further amount that we supposed was due us at that time, but there was no way of arriving at the exact figures, for the reason that the returns had not been made to us of the weight of the iron, but we supposed there was sufficient funds in the account of the North Chicago Rolling Mill Company against us to pay their bill against us for rails in June.

Q. Did you during the month of July, or prior to the 10th of July, 1885, ship the North Chicago Rolling Mill Company any ore?

502 A. Yes, sir.

Q. About, how much?

A. Well, I should think about one thousand tons as near as I can remember.

Q. At what price per ton?

A. The price delivered at Chicago was $5.25 per ton, from that price they should deduct the freight.

Q. That was payable on the 10th of the month following according to the contract?

A. No, sir; we understood it to be payable on the 15th, I supposed it would be. I never knew the exact date of the month following. I would like to give my reasons for not knowing the exact date. I sold it to be paid for at the same date in the month that the North Chicago Rolling Mill Company had been paying Mr. Cherrie; that was a verbal arrangement; I don't know whether it was the 15th or the 25th; I could not say.

Q. Did you, prior to the 10th day of July, 1884, meet Mr. Potter, the president of the North Chicago Rolling Mill Company; if so, when and where?

A. Yes; I met Mr. Potter on the morning of the 7th of July, on Monday morning, at his office in the Metropolitan building.

Q. Did Mr. Potter, at that time, or at any other time, make any demand upon your company for the payment of this 21,000 and some odd dollars of which you speak?

A. No demand was made at that time; some time thereafter a statement of account was rendered.

Q. How long after?

A. I think it was several months before the account was rendered.

Q. Did he ever make any demand on the company so far as you know, write any letter asking for the payment of that amount?

503 A. When this statement of account was rendered several months after the date I speak of, they simply showed it in the balance due us.

Q. Showed the balance due you?

A. Yes.

Q. You refer to the statement, a copy of which is attached to the deposition of Mr. Walden, taken before the master, do you? Please examine that (handing witness statement).

A. Yes, that is the statement I refer to; it is marked here "Exhibit A 4."

Q. The North Chicago Rolling Mill Company, then, on the 10th of July, 1884, was indebted to the St. Louis Ore and Steel Company in the sum of about $17,000 for pig metal, was it not?

A. Yes.

Q. Please give the reasons, then, in detail, why, if you have any reason why, you did not pay the amount of $21,000 to Mr. Potter, or to the North Chicago Rolling Mill Company, on the 10th of July, 1884?

(Objected to, as incompetent and immaterial.)

A. For the reason that I believed that North Chicago Rolling Mill Company was owing our company an amount fully equal to the amount that we were indebted to them.

Q. When you met Mr. Potter on the 7th of July, 1884, was any arrangement made with him, and, if so, state what it was for, the payment of ore by your company to his mill?

A. When I met Mr. Potter I stated to him that we had become involved in a heavy loss through the failure of Cherrie & Co., and I wanted him to understand there would be no further deliv-

504 eries of ore made by Cherrie & Co., but that we were anxious to continue the delivery to him for the account of the St. Louis Ore and Steel Company, and under that account the shipments continued right along by the company until July 21st, when the receivership for that company prevented any further deliveries, but they continued under the receivership for some little time. Mr. Potter stated he would receive the ore in that way. I also stated that I did not want any more of our money to get into the hands of Cherrie & Co.

Q. Do you recollect about the amount of ore which you shipped to Mr. Potter?

A. Say 5,000 tons, about 5,168 tons.

Q. Did Mr. Potter decline to receive any more ore from your company under that arrangement?

A. The company discontinued shipment on July 21st, immediately on the appointment of the receiver. Mr. Hitchcock saw Mr. Potter on the 23d or 24th of July, I think, and arranged with him to furnish ore as receiver, and we had shipped a few thousand tons when a telegram came from Mr. Potter to discontinue the shipments.

Q. But Mr. Potter did receive some ore from the receiver?

A. Yes, and paid for it.

Mr. WILLARD: I object to the witness stating the contents, or the substance of the contents, of a telegram or letter, and move to strike out the statement of the witness as to such contents or substance of contents.

Q. Do you know, Mr. Garrison, of a contract between the North Chicago Rolling Mill Company and Mr. Cherrie for the sale of a certain amount of ore, made, I think, in December, 1883?

A. I have seen such a contract.

Q. Have the St. Louis Ore and Steel Company any interest in that contract?

505 A. Nothing more than to supply Mr. Cherrie with the ore, a direct sale to Cherrie & Co.

Q. Do you know whether the North Chicago Rolling Mill Company received from Mr. Cherrie and yourself all the ore that it agreed to take under that contract?

A. I do. If you take into account what the St. Louis Ore and Steel Company delivered, and the sales—what was delivered to the North Mill Company; that was always delivered under that contract.

Q. Are you sure of that?

A. Yes. Cherrie & Co. delivered, I think, about 47,000 tons; then the sales we made, independent of that, amounted to about 5,100—about that; something more than 51,000 tons.

Q. Were the contracts between the St. Louis Ore and Steel Company and Cherrie & Co., for the sale of ore to Cherrie, and the contract between the St. Louis Ore and Steel Company and the North Chicago Rolling Mill Company, independent transactions?

A. Entirely so.

Q. Were the contracts between the St. Louis Ore and Steel Company and the North Chicago Rolling Mill Company for the purchase of rails by the St. Louis Ore and Steel Company, and the contract for the sale of pig metal to the North Chicago Rolling Mill Company, independent contracts?

A. Yes.

Q. Was there no written contract, so far as you know, between the St. Louis Ore and Steel Company and the North Chicago Rolling Mill Company for the sale of pig metal?

A. Nothing more than what Mr. Cherrie, acting as our agent, may have had; we had nothing.

506 Q. You had nothing?

A. No, sir; Mr. Cherrie reported a sale to us to the North Chicago Rolling Mill Company of $18 cash.

Q. Did your company make any requisition upon the North Chicago Rolling Mill Company for rails, under the rail contract, which that company was unable to fill?

(Objected to as being incompetent, immaterial and leading.)

Q. Did you ever have any conversations with any of the officers of said company in reference to their ability or inability to fill any requisition made upon the North Chicago Rolling Mill Company by your company, or the receiver of your company?

A. We had a correspondence with the North Mill Company, with O. W. Potter, its president.

Q. Did you have any conversation with any officer of the company in reference to the matter?

A. I had a talk with Mr. Parkes.

Q. What was said at that time?

A. As near as I remember, Mr. Parkes stated to me that he had succeeding in getting Mr. Talmage to receive from them either some 260 or 300 tons of rails that had been inspected by the inspector of the Missouri Pacific, and refused because they did not conform perfectly to the standard templet of the Wabash railway, and had made some reduction in price on that account.

Q. Was that all that was said?

A. That was the conversation I think, Mr. Parkes may have had upon that subject. There was a correspondence with Mr. Potter upon the subject.

Q. Did the North Chicago Rolling Mill Company refuse to roll a certain amount of rails, a requisition for which was made upon it by the St. Louis Ore & Steel Company, or by the receiver of that company?

507 A. Yes.

Q. Was the requisition made by the company itself, or by the receiver?

A. Made by the receiver.

Q. What was the amount of that requisition?

A. Two hundred tons of rails of the Missouri Pacific pattern, I think sixty-three-pound rails, sixty-six or sixty-three, I don't remember which.

Q. Were you at that time acting for the receiver?

A. I was the agent for the receiver.

Q. Was the receiver of that company prepared to pay for those rails in accordance with the contract made with the North Chicago Rolling Mill Company?

A. Yes, sir.

Q. Did the North Chicago Rolling Mill Company roll the rails?

A. No, sir.

Q. Did it refuse or did it not refuse to roll the rails?

A. Mr. Potter declined to make them, I have a telegram here to that effect.

Q. You have mentioned the fact that the St. Louis Ore & Steel Company went into the hands of a receiver about the 21st of July, 1884; what is the condition of the company at this time?

(Objected to.)

A. The company made an adjustment of its indebtedness, paying principal and interest, and to-day is continuing business as before the receivership without any foreclosure.

Q. Is the company solvent?

(Objected to.)

A. Entirely so.

508 Q. Are you in a position to know the condition of the company financially?

A. Yes.

Q. Do you know the fact that certain judgments were recovered against the North Chicago Rolling Mill Company in favor of the St. Louis Ore and Steel Company for the use of the Joliet Steel Company?

A. Yes, sir.

Q. Do you know of those judgments having been assigned?

A. I do.

Q. To whom?

A. To D. K. Ferguson, of St. Louis.

Q. For what purpose?

A. For the purpose of raising money to pay our indebtedness to Joliet Steel Company.

Q. Does Mr. Ferguson still hold the assignment of those judgments?

A. He does.

Q. Would a judgment of thirty or forty thousand dollars against the St. Louis Ore and Steel Company be collectable at this time?

A. Yes, without any difficulty.

Q. Look at this paper, purporting to be a telegram, dated 7, 25, '84, and state if that was received by the St. Louis Ore and Steel Company, and, if so, about what time.

A. Yes, this telegram was received at our office on the 25th of July, 1884.

Q. You may now read it, so that the stenographer may have a copy of it.

509 7, 25, '84, CHICAGO.

To R. A. Hitchcock, receiver St. Louis O. & S. Co., St. L.

I must decline to make the 200 tons of rails on the kind of payment you propose.

O. W. POTTER, *Pres't.*

Q. Was that a dispatch in reply to telegrams or letters sent by you to the North Chicago Rolling Mill Company?

A. Yes, sir.

Q. Have you copies of those telegrams?

A. I have.

Q. Are they before you now?

A. Yes, sir.

Q. Will you please read them, so that the stenogra-her may take copies of them?

(Objected to.)

ST. LOUIS, *July* 25, '84.

O. W. Potter, pres't, Chicago, Ill.

Expecting momentarily to hear from Receiver Humphreys, with positive instructions for the 2,000 tons. Meanwhile, please roll 200 tons for Missouri Pacific, and take your pay from ore arriving after

the 21st; it of course belongs to the receiver. I estimate there will be nothing to pay for these rails, failing which I will pay figures due, in accordance with the contract. Please answer quick.

(Signed) E. A. HITCHCOCK.

510 ST. LOUIS, *July* 25, 1884.

O. W. Potter, president, Chicago, Ill.

Thompson's letters refer to the last 500 tons pig-iron shipped you, and has nothing to do with the 200 tons rails which I asked you to furnish me as receiver, and against which you will have all the iron that may have arrived since the morning of the 22d, now in transit, which I estimate will amount to at least $4,500, and the balance for rails I will pay you, as per contract. If these rails are not shipped, parties here may attempt to break contract as explanable to you personally.

(Signed) E. A. HITCHCOCK.

OLYPHANT
vs.
ST. LOUIS ORE & STEEL CO.

Testimony taken before Henry W. Bishop, master in chancery of said court, on Friday, the 30th day of March, 1888.

Present: Mr. Hutchinson for St. Louis Ore and Steel Company, Mr. Willard for petitioner.

O. L. GARRISON, a witness recalled on behalf of the St. Louis Ore and Steel Company, being first duly sworn, was examined in chief by Mr. HUTCHINSON, and deposes and says as follows:

Q. Mr. Garrison, you have referred in your testimony in this case to the matter of the Wabash having refused to receive certain rails made by the North Chicago Rolling Mill Company under the rail contract; please state fully all the facts within your personal knowledge in regard to that matter and what, if anything, was
511 done by the receiver of the St. Louis Ore and Steel Company with reference to getting rails from other mills.

A. The receiver placed an order with the North Chicago Rolling Mill Company for 500 tons of the standard templet of the Wabash railroad, sixty-three pounds per yard, and at the request of the North Mill Company the inspector for the Missouri Pacific railway proceeded to the mill to receive these rails, he declined to receive them because of the fact that they were not in accordance with the templet. Upon learning that the inspector refused the rails the receiver went to Mr. Talmage, then manager for the Wabash, and undertook by every means that he knew how to get him to take the rails, he understood there was but a slight difference from the templet. Mr. Talmage refused to do so, said they were not what he had bought and he would not take them, and called upon us to supply just what his contract called for; the North mill could not do this, as they had not the rolls to make the exact rails. Mr. Talmage

then notified us that unless we furnished the rails promptly they would get them of another mill, and we then gave the Lackawanna Iron and Steel Company of Pennsylvania, an order for 500 tons, and for an additional 1,500 tons that the Wabash wanted for immediate delivery. These rails were made by the Lackawanna mill and paid for.

Q. Paid for by the St. Louis Ore & Steel Company?

A. Yes, in cash, some 260 tons of rails that had been rolled by the North Chicago rolling mill on the order for 500 tons were not received by our company, but were afterwards taken by the Missouri Pacific at a reduced price on account of their not being just what the templet called for.

Q. In this testimony in this case you have referred to
512 the financial condition of the St. Louis Ore and Steel Company, would a judgment of $50,000 against that company be collectible at any time?

A. Yes.

Q. Has it a considerable amount of unincumbered property?

A. Yes, real estate and assets.

Cross-examination by Mr. WILLARD:

Q. To what value, have they unincumbered real estate the title of which stands in their name, the St. Louis Ore and Steel Company?

A. A low valuation, I should say, would be $75,000 within the city limits of St. Louis.

Q. Unincumbered real estate standing in the name of the St. Louis Ore and Steel Company?

A. Yes, sir.

Q. What kind of real estate is it?

A. It is property fronting on the river, on what we might term the front street of the river, the southern part of the river, one tract of ninety feet front.

Q. Dock property?

A. It is away up towards St. Louis from the dock, two miles north of the dock towards the city, the end of Carondelet.

Q. How long have they owned that?

A. They took that property over in 1882.

Q. What use do they make of it now?

A. They are not using it at all.

Q. Laying idle?

A. Laying idle.

Q. Offering it for sale?

A. It has not recently been offered for sale, no, sir.

513 Q. It is not offered for sale now?

A. Not for sale, it is not for sale so far as I know.

Q. The order for the Missouri Pacific rails you speak of was given in writing to the North Chicago Rolling Mill Company?

A. Yes.

Q. You had previously given orders to the same company, had you not?

A. Yes.

Q. In writing?

A. Yes.

Q. The rails which you procured from the Lackawanna Iron and Steel Company were delivered to the Missouri Pacific in the place and stead of those which you had ordered from the North Mill Company?

A. They were delivered to the Wabash railroad for and on account of our contract with the Missouri Pacific.

Q. The contract between the St. Louis Ore and Steel Company and the Wabash road?

A. With the Missouri Pacific, the whole contract.

Q. In other words, when you did not get from the North Chicago Rolling Mill Company, that which you wanted, you got it from other sources and thus supplied yourself?

A. In this particular case, yes.

Q. There was considerable correspondence, was there not, between the St. Louis Ore and Steel Company and the North Mill Company in regard to that order?

A. Yes.

Q. Correspondence following the giving of the order?

A. Yes.

514 Mr. HUTCHINSON: The reason for your ordering the rails of the Lackawanna Iron and Steel Company may appear in your deposition, but I would like to have you state here what it was; what they were.

A. The rails were?

Q. No; the reasons for your giving the order to the Lackawanna Steel Company for the rails.

(Objected to because the witness has already stated his reasons.)

A. Because the North Mill Company had failed to make the kind of rail called for in the contract, and the Wabash road were demanding the rails, and we offered to supply them from another mill rather than lose the entire contract which we were endeavoring to maintain.

Mr. WILLARD: You mean to say that the North Mill Company did not furnish that rail which was called for in the contract between the St. Louis Ore and Steel Company and the Missouri Pacific, is that it?

A. Yes.

515 This agreement made in duplicate this (1st) first day of December, A. D. 1883, between the North Chicago Rolling Mill Company, party of the first part, and the St. Louis Ore and Steel Company, party of the second part, witnesseth:

First. That for and in consideration of the conditions hereinafter mentioned, and the payments herein provided for, to be made by the party of the second part, the party of the first part agree to fur-

nish and the party of the second part agree to receive eighteen thousand tons (2,240 lbs.) of No. 1 Bessemer steel rails.

Second. The party of the first part agree to deliver said 18,000 tons of steel rails free on board cars at their works South Chicago, Illinois, during the months of January, February, March, April, May, June, July, August, September, October, November and December 1884, in about equal amounts each month for shipment to the Missouri Pacific Railway Company or lines operated or leased by said company, and to be consigned as may be hereafter directed.

Third. The pattern of rails which the said parties are to furnish. and receive is to be as follows: The standard pattern of the Missouri Pacific Railway Company or operated lines weighing 52 + + 56 + + 59 + + or 63 + + per lineal yard as per templet to be furnished by the second party.

Fourth. Said rails to be drilled for bolts as follows:

	52 #	56 & 63 #	59 #	
End of rail to center of first hole	$2\frac{7}{8}$	$2\frac{7}{8}$	$2\frac{5}{8}$	inches.

	52 #	56 & 63 #	59 #	
Center of first to center of second hole	5 in.	6 in.	5 in.	*inches*

	52 #	56 & 63 #	59 #	
Diameter of hole	1	1	$\frac{7}{8}$	inches.

52-lb. rail is $1\frac{5}{8}$ inches from flange to center of hole.

56 and 63 lb. rail are $1\frac{3}{4}$ inches from flange to center of hole.

59-lb. rail is $1\frac{23}{32}$ inches from flange to center of hole.

516 The above drilling may be changed at any time by written instructions (giving drilling) by the second party.

Fifth. The party of the first part agree that said 18,000 tons of steel rails shall be of their best standard quality of manufacture, with an allowance of three per cent. of second-quality rails and which second-quality rails the second party agrees to receive in addition to the 18,000 tons of No. 1 rails, providing the first party shall make that amount of second-quality rails while rolling the 18,000 tons of number one rails.

Sixth. The length of the rails to be thirty feet, with the usual allowance of ten per cent. for shorter lengths but none to be less than twenty-two feet, and all to be full feet in length.

Seventh. The price which the party of the second part agrees to pay to the party of the first part is thirty-five dollars ($35.00) for each gross ton of 2,240 lbs. of No. 1 rails and ($33.25) thirty-three dollars and twenty-five cents per gross ton, for the second-quality rails delivered as hereinbefore specified.

Eighth. Settlement to be made in accordance with the weights of said first party at their works and payments for the rails to be made in cash on the tenth day of each month for all rails delivered during the previous month.

Ninth. The said second party is hereby permitted at all times to have any competent person present to inspect said rails as to quality and weights and such person's inspection shall be accepted by both parties to this contract.

Tenth. In case of a strike among the workmen of the party of the first part, destruction of or serious damage to their works by
517 fire or the elements, or any cause of delay beyond their control, the party of the first part are not to be held strictly to the time of delivery named herein, but shall deliver as promptly as possible after such damage has been repaired or strike ended.

Eleventh. It is further agreed between the parties hereto that the cars on which the said steel rails are to be loaded, at the works of the said first party shall be furnished to said first party by the second party, for the delivery at the time herein specified and in the absence of the furnishing of cars upon which to load said rails, enabling the said first party to make their deliveries, as herein specified then the said second party shall make their settlements and pay for said rails on the tenth day of the month the same as though said rails had been delivered and the non-delivery of cars shall in no way relieve the said second party from the prompt payment for the rails on the tenth day of the month as specified herein.

See note below.

THE NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*
THE ST. LOUIS ORE AND STEEL COMPANY,
By O. L. GARRISON, *Sec'y.*

December 1st, 1883.

This contract was signed by the North Chicago Rolling Mill Co. after clause relating to guarantee of rails was struck out.

Witness:

HARVEY C. BROWN.

The Missouri Pacific railway guarantee clause showing that guarantee of rails is waived by the second party and the Missouri Pacific guarantee is waived by the first party.

CHICAGO, *Dec.* 22, 1883.

It is hereby understood between the parties that the first party hereby waive the guarantee of this contract by the Missouri Pacific railway and the second party as per telegram attached hereto hereby waive the guaranteeing of the rails by the first party as per written clause attached to the ninth clause of this contract
518 and which written clause is struck out by mutual agreement of both parties hereto.

NORTH CHICAGO ROLLING MILL CO.,
By O. W. POTTER, *President.*

CHERRIE & CO.,
Ag'ts for the St. Louis Ore and Steel Co.

(Endorsed:) Ent. 167–169. North Chicago Rolling Mill Co. steel-rail contract with the St. Louis Ore and Steel Co.; date, Dec. 1st, 1883; tons, 18,000; deliveries during the year 1884.

519 Form No. 1.

The Western Union Telegraph Company.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an unrepeated message, and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECKERT, *General Manager.*

Number.	Sent by—	Rec'd by—	Check.
192.	A. H.	U. S. 2.	26 paid.

DEC. 22, 1883.

Received at 1.49 p. —.
Dated St. Louis, Mo., 22.

To Cherrie & Co.:

You are hereby authorized to strike out guarantee clause in North Chicago Rolling Mill Company's contract for eighteen thousand tons of steel rails sold our company.

O. L. GARRISON, *Sec'y.*

520 DEC. 20, '3.

O. L. Garrison, St. Louis Ore & Steel Co., St. Louis, Mo.:

Authorize us to scratch out guarantee clause in North Mill contract. None of the mills here give this, and Potter positively refuses to sign with it in. Everything else all right. Answer quick.

CHERRIE & CO.

Paid.

521 Memorandum of contract made and entered into this twenty-sixth (26th) day of December A. D. 1883, by and between R. M. Cherrie under the firm name of Cherrie and Company, of Chicago, Illinois, party of the first part and the North Chicago Rolling Mill Company a corporation under the laws of Illinois, party of the second part witnesseth:

50,000 tons Pilot Knob iron ore.—That for the consideration hereinafter mentioned, the party of the first part has hereby sold, and agrees to deliver to the party of the second part and the party of the second part agrees to receive fifty thousand (50,000) gross tons of Pilot Knob (so called) iron ore, the said ore to be mined and shipped from the Pilot Knob mine situated in the State of Missouri, and owned and operated by the St. Louis Ore and Steel Co. a corporation under the laws of Missouri.

Delivery.—The said first party agrees to deliver and the said second party agrees to receive the said ore at the works of said second party at South Chicago, or at the works of said second party at North Chicago at either or both places, as may be required by said second party.

It is understood however, that for so much of the ore as may be delivered at North Chicago works aforesaid the party of the first part shall not be liable for any cost of delivery beyond the Sixteenth-street yard of the Chicago and Northwestern Railway Co. in Chicago, it being also understood that said first party is now making effort with the railroad transporting the said ore from St. Louis to Chicago, to make the same rate of freight for delivery at works of said second party, North Chicago as now exists for delivery at works South Chicago, and succeeding in such effort the said first party will then and in that case make delivery at the works of said second party
North Chicago, at the same price per ton as agreed upon for
522 delivery at the works of said second party, South Chicago.

The said first party agrees to deliver and the said second party agrees to receive the ore aforesaid at the rate of from one thousand to seven thousand tons per month, as directed by the second party from time to time and commencing January first A. D. 1884, it being understood that all of said fifty thousand tons shall be delivered and received during the year 1884, and in such quantities monthly as may be required by the second party.

It is agreed between the parties hereto that the weights of the said second party shall be taken and accepted as correct and settlement made accordingly. The said second party agreeing to furnish to said first party statements of weights of all of said ore, as received and showing the initial and number of each car, and the gross tare and net weights of same.

Price $5.25.—The price of said ore agreed upon between the parties hereto is the sum of five dollars and twenty-five cents ($5.25) per gross ton of 2,240 pounds *b.* o. b. cars at South Chicago or the Sixteenth-street yard of the C. and N. W. R'y, Chicago, for such ore as shall be consigned to the Chicago works. The said second party agreeing to make settlements and pay for the same in cash as follows:

For all ore delivered during any calendar month, payments to be made on the fifteenth day of the calendar month next ensuing.

Guarantee.—The first party guarantees to the said second party for and in consideration of the price of five dollars and twenty-five cents per ton named for said Pilot Knob iron ore, that the average
analysis of said iron ore shall be not less than sixty (60%) per
523 cent. of metallic iron, or more than one one-hundredth of one

per cent. (.01%) of phosphorus, with silica, lime and alumina, not to exceed silica nine per cent. lime one-half of one per cent. and alumina one-half of one per cent. The ore to be well mined and free from rock or other deleterious matter so the average shall not materially deviate from the above and to be in no case less than fifty-seven per cent. of metallic iron but averaging sixty per cent.

The same to be subject to the analysis of the chemist of said second party but any differences between the parties relative to analysis of the ore shall be subject to verification by any competent chemist the first party may select.

The basis of price being substantially $5.25 per ton, for not less than sixty per cent. of metallic iron with .01% of phosphorus.

Option.—The said first party hereby grants to said second party the option until the first day of March, A. D. 1884, to increase the fifty thousand tons of ore herein provided for, to seventy-five thousand tons, the said increase to be at the same price and upon the same terms and conditions as herein stated except in the time of receiving said ore and which time can be extended from January first 1885, to May fifteenth 1885 if the second party so desires. The 50,000 tons being delivered say in 1884, and the 25,000 tons by May fifteenth 1885.

R. M. CHERRIE.
NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*

(Endorsed:) Filed Nov. 26, 1888. Wm. H. Bradley, clerk.

524 CHICAGO, *Sept.* 21, 1883.

O. W. Potter, Esq., pres't N. C. Rolling M. Co., Chicago.

DEAR SIR: Agreeably to conversation and arrangement with our Mr. Cherrie to-day, we have entered your order for 750 gross tons Pilot Knob iron ore, and have directed the St. Louis Ore and Steel Co. to make early shipment of same as follows:

500 tons to N. C. R. M. Co., care E. C. Potter, sup't So. Chicago, and

250 to N. C. R. M. Co., care N. W. R'y Co., Chicago.

Yours, &c., CHERRIE & CO.
CLARK.

525 SEPT. 22, 1883.

Mess. Cherrie & Co., 90 to 92 Dearborn street, Chicago, Ill.

GENTLEMEN: Replying to yours of the 21st inst., relative to Pilot Knob ore from St. Louis, we understand the delivery to be the same as you name it. The price to be $5.35 per gross ton delivered at our works at South Chicago for the 500 tons, and $5.35 per gross ton, delivered at the 16th-street yard of the C. & N. W. R'y, for the 250 tons.

Please advise us if we are right in this. Settlement to be made in cash on the 15th day of the month following the month of de-

livery of the ore, and settlement to be made from our weights at our works. Your confirmation of this will close the transaction and oblige

Very truly yours, O. W. POTTER, *Pres't.*

CHICAGO, *Sept.* 24, 1883.

O. W. Potter, Esq., pres't N. C. R. M. Co., city.

DEAR SIR: Acknowledging receipt of yours 22d inst., we beg to say that you rightly understand the arrangement for the 750 tons ore, viz.: $5.35 per gross ton, settlements by your weights, pay't in cash 15th day of mo. following delivery. Deliveries to be made, 500 tons at your works, So. Chicago, and 250 tons at 16th-street yard of the C. & N. W. R'y Co.

Yours, &c., CHERRIE & CO.
CLARK.

526 & 527 CHICAGO, *Dec.* 24, 1883.

O. W. Potter, Esq., pres't, &c.

DEAR SIR: Our Mr. Cherrie would thank you to return by bearer the old contract on rails. He goes to St. Louis to-night and will be returned Wednesday morning.

Yours, etc., CHERRIE & CO.
CLARK.

CHICAGO, *Jan.* 1, '84.

O. W. Potter, pres't N. C. R. M. Co., city.

DEAR SIR: Please make for account Vulcan mill on 18,000 tons contract say 1,000 tons Mo. P. 56-lb. standard steel rails, and 1,000 tons Wabash 59-lb. standard steel rails, and make shipment of same as follows: 500 tons Mo. P. 56's to International & Great Northern R'y, Palestine, Tex., care of J. Herrin, supt., via East St. L. & Carondelet & St. Louis, Iron Mountain & Southern R'ys. 500 tons Mo. P. 56's to Texas & Pacific R'y, care W. Cummings, supt., Marshall, Tex., via Wabash, E. St. L. & Carondelet & St. Louis, Iron M. & Southern R'y. 150 tons Wabash 59-lb. to R. S. Minor, supt., Moberly, Mo. 150 tons Wabash 59-lb. to care E. N. Armstrong, supt., Peoria, Ills. 300 tons Wabash 59-lb. to G. W. Stevens, Peru, Ind.

Yours, &c., CHERRIE & CO.
CLARK.

CHICAGO, *Jan'y* 14, 1884.

John C. Parkes, Esq., general manager, &c.

DEAR SIR: Be kind enough to send me note by bearer in reference to making 500 tons more in February than intended
528 per contract, reducing, make for some future month same amount.

Yours, &c., CHERRIE & CO.
CLARK.

CHICAGO, *January* 14, 1884.

Messrs. Cherrie & Co., Chicago, Illinois.

GENTLEMEN: Your favor of this date handed me by Mr. Feiro has been canvassed. I am very sorry to say that our people do not see now any way whereby they can change the distribution of tonnage from future months on account of the St. L. O. & S. Co. contract to the month of February, but if anything should turn up later, and it would then suit your convenience, would be glad to accommodate you.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

ST. LOUIS, MO., *Jan.* 19, 1884.

O. W. Potter, Esq., pres't North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: By request of Messrs. Cherrie & Co., we hereby guarantee any deliveries and the quality of the ore up to 100,000 tons, as we may have agreed with said Cherrie & Co., in contract made with them December 13, 1883.

Yours, respectfully, O. L. GARRISON, *Secretary.*

529 CHICAGO, *January* 23, 1884.

Messrs. Cherrie & Co., Chicago, Ill.

GENTLEMEN: I herewith acknowledge receipt of order 780 St. Louis Ore & Steel Co. for five hundred tons fifty-six pound steel rails, Missouri Pacific pattern for February delivery, and which shall have our attention at the proper time.

Resp'y yours, JOHN C. PARKES,
Gen'l Manager.

CHICAGO, *Jan.* 23, 1884.

Messrs. Cherrie & Co., Chicago, Ill.

DEAR SIR: There is quite an amount of No. 2 steel rails on hand now due the St. Louis Ore & Steel Company on their contract, and we do not receive any instructions from those people in relation to shipping these rails.

Will you please designate whether we shall pile these rails in your yard subject to your order, or whether you will give us shipping directions, so that we may send them out before the close of the month.

As I understand the matter whether they are shipped or not, they are to be paid for on the 10th of the month following the month in which they are made. Please let me know if this is your understanding in the matter, and if you will kindly give me instructions I will be governed accordingly.

Resp'y yours, JNO. C. PARKES,
Gen. Manager.

530 ST. LOUIS, MO., *Jan.* 28, 1884.

John C. Parkes, Esq., gen. manager, Chicago, Ills.

DEAR SIR: Replying to your favor of the 26th inst., we have sent Messrs. Cherrie & Co. to-day for delivery to you an order for thirty tons of Missouri Pacific 56-lb. standard rail, second quality, and the balance of the seconds that you reported on hand (Wabash pattern, 59 lbs.) 15,830–2,240 tons, which latter lot I will thank you to forward to our works at Carondelet via the Wabash and the East St. Louis Carondelet railways.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *Jan.* 29, 1884.

John C. Parkes, Esq., G. M. N. C. R. M. Co., city.

DEAR SIR: Herewith we hand you St. Louis Ore & Steel Co., order 789, for thirty tons second quality 56 lb. and order 790 for 15 tons second quality 59-lb. steel rails.

Yours, etc., CHERRIE & CO.

Enclosures.

CHICAGO, *Jan.* 29, 1884.

Messrs. R. M. Cherrie & Co., Chicago, Ill.

GENTLEMEN: Your favor of Jan'y 29th received and contents noted, and we will give the matter of the orders from the St. Louis Ore & Steel Co., Nos. 789 and 790 for No. 2 steel rails, due attention, and will ship at once as directed.

Resp'y yours, JOHN C. PARKES,
Gen'l Manager.

531 ST. LOUIS, *Jan.* 29, 1884.

John C. Parkes, gen. manager:

Please say how many tons rails you have shipped during January. Mr. Cherrie requested us to let you have orders for 2,000 tons, and we made our arrangements with the other mills accordingly; we have had papers for fifteen hundred twelve tons.

O. L. GARRISON.

ST. LOUIS, *Jan.* 29, 1884.

John C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: We have your telegram, reading: "Have shipped all the rails to Peru and Springfield we can ship this month, and the accounts have all been rendered to you."

Mess. Cherrie & Co. asked us to give you orders for 2,000 tons for January delivery, and we made our calculations accordingly in placing orders with the other mills for this month. Am sorry you could not have advised us sooner, for, as you have made your shipments, it breaks into the Springfield delivery, leaving ninety-eight tons short to that point, and compelling us to hold our invoice to the Missouri Pacific until that shipment is complete. Was it not your wish to roll 2,000 tons in January?

Will you kindly say how soon you expect to make the February delivery? The sooner in the month the better it will suit us.

Yours truly, O. L. GARRISON, *Sec'y.*

532 CHICAGO, *January* 30, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore and Steel Co., St. Louis, Mo.

DEAR SIR: Your favor of Jan. 29th received and contents fully noted. In the early part of January we thought we might be able to make 2,000 tons of steel rails for your people, and so informed Mess. Cherrie & Co., but later in the month, owing to the severe storms and your people not being able to handle the material, we were forced to change rolls and work for other parties, and have not been able to take it up since—up to this date; we intend to ship about 169 tons of 56-lb. rails for the Missouri Pacific more than we have advised you of this month, which will make about 1,681 tons in all, shipped in January.

I canot see the point of your letter why we cannot get settlement for whatever we may have delivered, nevertheless it does not just fit the amount the requisition called for, and I hope you will be able to arrange settlements for the *the* amount shipped.

We expect to take up the 59-lb. rail early in February, but will advise you later as to just the time we will be able to do so.

Resp'y yours, JOHN C. PARKES,
Gen'l Manager.

ST. LOUIS, *Feb. 5th*, 1884.

John C. Parkes, gen. manager, Chicago.

DEAR SIR: Your favor of the 30th of January came during my absence, and in reply I beg to state that our requisition from the Missouri Pacific road, 1,000 tons for Jan'y, and for the Wa-
533 bash 1,000 tons for Jan'y. This made the 2,000 tons orders for which were sent to you to roll. Now, you gave the Missouri Pacific their 1,000 tons and about 500 tons to the Wabash, which would leave say 100 tons to go to Springfield and 400 tons to Peru, to complete Wabash delivery. Inasmuch as you completed the Missouri Pacific Jan'y delivery, they are perfectly willing to take the 166 tons from us and apply it on orders you have for February, but we have no right to expect them to take and pay for rails in excess of their requisition. Don't you think this fair?

I hope you can take up the Feb'y delivery of 59-lb. rails early this month for the Wabash, so we can get the rails here in time to bill to the Missouri Pacific and receive our pay in March. By doing this you will greatly oblige us.

Sorry, indeed, that I could not have been here when you visited our city a few days since, but urgent business took me East; trust you were pleased with appearance of things at Pilot Knob.

Yours respectfully, O. L. GARRISON, *Sec'y.*

CHICAGO, *Feb'y 6th*, 1884.

E. A. Hitchcock, Esq., pres't St. Louis Ore & Steel Company, St. Louis, Mo.

DEAR SIR: I arrived in Chicago yesterday morning from my trip to your city, also to Pilot Knob and your mines there. I was received by your manager, Mr. Simpson, very kindly, and shown all through your property there, and I cannot express to you the manner in which I felt and was impressed with the magnitude of the developments there.

534 Your people shipped during last month much more ore than I had any idea was sent us, but, at the same time, I find we are not getting ore as per our contract. That is, our contract reads that we are to have ore averaging 60 % metallic iron, but our analysis so far, and working of the ore, shows we have not received to exceed 58 % ore, and I understood from Mr. Simpson that his instructions were to ship this grade of ore to us.

I had hoped to have seen you on Saturday evening at the hotel, as per your intimation to me, when I saw you last, that you would certainly call upon me in the evening, but I suppose you were engaged otherwise to such an extent that you could not call upon me.

Will you kindly have instructions telegraphed your Mr. Simpson, to hereafter send us ore that will average 60 per cent. metallic iron as per our contract with Messrs. Cherrie & Company.

I find in looking matters over, that there is not any doubt as to your being able to ship all of the ore we may require, but I think there will be considerable trouble in getting the ore to us, so long as you continue to transfer the ore from cars in St. Louis.

From what information I could get from the railroad officials they seemed to think the cars could come through to Chicago just as well as not.

In making our contract with Messrs. Cherrie & Company for this ore, we endeavored to get them to guarantee 62 per cent. metallic iron, but they did not feel like doing this, but were perfectly willing to make the guarantee for 60 per cent., and as per my statement above as to the percentage of metallic iron in the ore received, we do not feel that we should settle for 58 per cent. ore at the price named in contract for sixty per cent. ore.

535 Will you please investigate this matter and let me know just what we may expect, and very much oblige.

Resp'y yours, JOHN C. PARKES,
Gen'l Man'g'r.

CHICAGO, *February* 7, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore and Steel Company, St. Louis, Mo.

DEAR SIR: Your favor of February 5 received and contents fully noted. In relation to the rails shipped the Missouri Pacific and the requirements of the Wabash, would say the remarks about its being fair as to the completion of requisition for the Missouri Pacific and Wabash seems to be all right, at the same time our contract

reads that we are to receive pay for all rails shipped during the previous month. Of course, we may be short on one requisition at one time and over on another at another time, and by letting this matter take care of itself in that direction it seems to me the railroad companies ought to be willing to make settlement as per shipments. However, we will do the best we can in this direction. I hope to be able to take up the Wabash requisition next week, and will endeavor to make 1,500 tons of their 59-lb. seconds early this month—the balance of the requisition for the Missouri Pacific has already been made for this month's delivery. So you can see we will soon be caught up with everything, and have papers in your hands in good season.

As you say you are sorry you were absent at the time of my visit to your city, I would also say I was very sorry that I did not see you. After visiting Pilot Knob, and seeing what I did there,
536 I am satisfied to let the matter rest, as it seems to me your business outlook in that direction is of such magnitude that I cannot do the subject justice in saying anything about it. I was very kindly treated also by your manager at that point, and shall wait patiently until I have another opportunity to visit you again.

I hope you may be able to see your way clear to give us ten thousand tons of ore for the month of February. I remain,

Resp'y yours, JOHN C. PARKES,
Gen'l Manager.

ST. LOUIS, *Feb. 8th*, '84.

John C. Parkes, gen. man'g'r, Chicago.

DEAR SIR: Your favor of Feb. 7th received and contents fully noted. We will to-morrow make you remittance for your account, which I trust will be satisfactory to you. The short delivery to the Wabash will make no difference; that shortage you can make up during the *recent* month, as you intimate; the only thing we can't do is to give either the Missouri Pacific or Wabash more rails in any one month than their requisition calls for. They don't object to our doing this thing, but we don't find them willing to pay for the rails. I fully realize that there are causes that will sometimes prevent your completing a shipment just as we may ask you. When this occurs you can straighten the matter out when the rolls are in again. Am glad to know that you intend to commence rolling the Wabash rails early this month, and will complete the 1,500 tons, and also balance of Missouri Pacific requisition. We will make known to you their wants for March at an early date.

537 Am gratified to know that you received such a favorable impression of Pilot Knob, and we shall do our utmost to please you in the matter of ore. These heavy shipments rather get the best of us for a little time, but everything, I am confident, will work out to the satisfaction of both of our companies very soon. The promise- made by Mess. Cherrie & Co. to you were more than we authorized, and they did not realize, as you can readily do, how difficult a matter it is to increase shipments from 50 to 100 per cent. My records show 9,001 tons of ore mined and shipped for your ac-

count during the month of January, and our contract with Mr. Cherrie was for delivery at East St. Louis, not Chicago, he having made his own freight rates from that point, and we are calling upon Mr. Cherrie to make settlement with us in accordance with contract. We would be quite willing to let any small quantity of ore lap over into another month, but I rather think he was misled in agreeing to deliver to you, at Chicago, the quantity of ore that might be undelivered between East St. Louis and Chicago at the end of the month. It has always been the practice of Joliet, Carnegie, and others, to take up to the 10th of the month any receipts that may come in, and apply on receipts of the previous month, so long as they belong in that month. Understand, I am not making any suggestions to you as to how your accounts should be kept, only I think, probably, I did in conversation say to Mr. Cherrie that we kept our accounts open until the 10th, so as to get in all shipments for the previous month, and that this was the practice with Joliet and Carnegie, and thought you would do the same.

I only allude to the matters for the reason that I have an
538 idea you are hearing from him concerning the quantity of ore for which we are entitled to settlement from Cherrie & Co., and which, under your terms as I understand it, he is not entitled to.

There is a letter in my hand from you for Mr. Hitchcock, and I hope he will be here this evening to reply to same; if not, he will probably do so to-morrow on his return to the office.

Yours respectfully, O. L. GARRISON, *Sec'y.*

ST. LOUIS, *February* 11, 1884.

Jno. C. Parkes, Esq., gen'l manager North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: Your letter of the 6th was received during my absence of one day from the office, and should have had an earlier reply since, but for having been unwell for the past few days.

Regarding the quality of the ore referred to by you, we now understand from Mr. Cherrie that he contracted with you for a 60 per cent. ore, basing the percentage on the ore which was shipped you last fall. While he was oversanguine on the percentage that the ore would run in such large quantities, and we had only contracted with him for a 58 per cent. average; still, if he has agreed to supply you with an ore averaging 60 per cent. we will furnish it as far as we possibly can and charge him with the difference; but you must understand, from your personal observation at the mines, that we cannot maintain shipments to the extent you desire, if you wish the percentage of metallic value materially increased. Six months hence we will be farther into the veins giving the best metallic yield, when we have no doubt we can fully meet your requirements as to quantity.

539 I regret I did not see you on your return from Pilot Knob, but was too unwell that evening to leave my house. Am glad to learn, however, that you had a pleasant visit in that locality.

Yours truly, E. A. HITCHCOCK, *President.*

CHICAGO, *Feb'y* 12, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Your favor of Feb. 8th received and contents fully noted.

In relation to the Missouri Pacific and Wabash rails will say, we will have to do the best we can in this matter and make things satisfactory and which I have no doubt will turn out to be so before we get through. I am very much obliged for your attention in the matter and we shall endeavor to give you the full amount of Wabash and Missouri Pacific for the month of February, and shall commence rolling early next week.

I also note what you say in relation to ore, and think this matter will adjust itself after a little further work in this direction.

Will you kindly give me shipping instructions at the time you send requisition for the No. 1 rails for all number 2 rails up to the amount due on the 3 per cent. contract.

We have made some rails for you this month but have not had shipping directions for number two rails and our people de-
540 sire to get them out of the way, and if you will kindly give me shipping instructions for the Feb'y delivery of No. 2 steel I shall esteem it a favor.

Resp'y yours, JNO. C. PARKES,
Gen'l Manager.

ST. LOUIS, MO., *Feb'y* 12, 1884.

Jno. C. Parkes, gen'l manager, Chicago, Ill.

DEAR SIR: Your favor of the 12th received this morning, we note that you intend furnishing the full quantity of Wabash and Missouri Pacific rails for the month of Feb'y for which we are obliged. I would be glad to give you shipping instructions for the three per cent. of seconds under contract, if I knew just where they were going, but the railroad companies withhold this information from us frequently until late in the month. I have asked them to give me destination of the Wabash seconds and we have already given you instructions relative to the Missouri Pacific seconds, we promptly forwarded through Messrs. Cherrie & Co. the order for the shipment of the 56-lb. Mo. Pacific seconds. Possibly the letter was delayed en route and has reached you ere this.

Yours truly, O. L. GARRISON, *Sec'y.*

ST. LOUIS, *Feb'y 16th*, '84.

John C. Parkes, gen. manager. Chicago, Ills.

DEAR SIR: We have sent to Mess. Cherrie & Co., to-day for delivery to you on March requirements of rail, which will be 1,000 tons of 59-lb. Wabash standard, and 500 tons of Missouri Pacific 56-
lb. standard. Some time ago Mr. Cherrie said it would be
541 somewhat to your advantage to know just what we will require and to place the orders with you sufficiently early to let you, should you desire to do so, make them in advance of deliv-

ery. This is a privilege you always have, just so long as the time of payment is not advanced.

We hear from our Mr. Simpson to-day that the heavy rains prevailing in his section, and in fact all through the South, are retarding operations in his department somewhat. I hope not enough, however, to materially affect our deliveries of ores to you.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *Febr'y 27th*, 1884.

O. L. Garrison, sec'y St. Louis Ore & Steel Co., St. Louis, Mo.:

Can you not give us shipping directions for number two steel rails due Wabash on account of this month's delivery, answer.

JNO. C. PARKES,
Gen'l Manager.

Pay.

ST. LOUIS, MO., *Feb'y 28th*, 1884.

John C. Parkes, Esq., gen. manager, Chicago, Ills.

DEAR SIR: We find that you have completed our Jan'y orders to the Wabash and also Feb'y orders, and this morning's mail brings us a bill of lading for $76\frac{2040}{2240}$ tons of Wabash rail, am I to understand that this is applying on the March delivery?

Yours truly, O. L. GARRISON, *Sec'y.*

542 ST. LOUIS, MO., *Feb. 28th*, 1884.

Jno. C. Parkes, Esq., gen. man'g'r, Chicago.

DEAR SIR: Yours of 27th received. We note that you are receiving the accumulated ore at your end of the line, for which we are much obliged. We had expected a washout at the mines on account of the very heavy floods prevailing all through the South and Southwest, but, fortunately, the water did not reach danger line in our section, and the trouble has passed now and we can continue shipments of ore to you regularly from Monday next. The large receipts in February in excess of what our shipments have been is explained by the delays in January delivery. I trust, however, that the Wabash have now got this thing so in hand that there will be no further cause for complaint for either you or ourselves. We have certainly followed the railroad people up pretty closely and given them the attention they deserve through the many delays. We wrote you last night to please pile the 45 tons of No. 2 Wabash in the yard and hold for our account. The roads down this way are economizing somewhat just at the present time and won't take the seconds from us.

Yours truly, O. L. GARRISON, *Secretary.*

CHICAGO, *Feb'y 29th*, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Your favor of the 28th inst., in relation to shipments of ore, etc., received and contents fully noted.

And as you say, I think matters are now in such shape that we

will have but little trouble in taking care of shipments as fast as you make them.

543 The Wabash undoubtedly are relieved of any surplus ore that may have been on their tracks at this time, and we can readily take care of the daily shipments you have been making heretofore.

We will endeavor to do as you request in holding the 45 tons of Wabash steel now in our yard subject to your order, and for which I have already directed invoice to be sent you.

I note what you say in your letter in relation to completing orders for steel rails for January and February delivery.

The bill for the 76 tons, 2,040 pounds, you speak of is in excess of the requisitions for the two months, and of course if you can work them in for the month of February, we shall be obliged, if not, you will please have them apply on March delivery.

Resp'y yours, JNO. C. PARKES,
Gen'l Manager.

CHICAGO, *March* 1*st*, 1884.

O. L. Garrison, sec'y St. L. O. & S. Co., St. Louis, Mo.:

We are rolling Missouri Pacific rails; mill reports no inspector. What shall we do, we cannot hold these cars after they are loaded. As we understand it, our responsibility ceases upon the shipment of cars. Cherrie & Co. say they have nothing to do with the inspection. Answer.

JNO. C. PARKES,
Gen'l Manager.

544 ST. LOUIS, Mo., *M'ch* 1, '84.

John C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: It was so late this evening before I could hear from the Missouri Pacific about their rails that I was satisfied that you had gone home for the day, and I therefore write you to say that they tell me they have ordered their inspector to report at your mill Monday morning. They ask that hereafter you will kindly give them one or two day's notice of your intention to roll, so they can have their inspector on hand. For our part, we would much prefer to have Mr. Cherrie inspect these rails and tried very hard to get him the business, but the Missouri Pacific want one man to do their business.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *March* 6, 1884.

O. L. Garrison, Esq., sec'y St. L. O. & S. Co., St. Louis, Mo.:

If we can make four or five hundred tons more rails for the Wabash road this week, will it be all right, and will you send requisition for them? Answer.

JNO. C. PARKES,
Gen'l Manager.

30 pay.

ST. LOUIS, MO., *March* 7, 1884.

John C. Parkes, gen. manager:

Missouri Pacific don't want to give Wabash any excess this month, sorry, but could not effect it.

O. L. GARRISON.

545 CHICAGO, *April* 28, 1884.

Messrs. Cherrie & Co., Chicago, Ill.

GENTLEMEN: Having purchased of you 500 tons of Bessemer pig metal, and which, if satisfactory in quality, will probably lead to the purchase of 2,500 tons, and possibly 5,000 tons; I desire to have you confirm, by letter, in reply to this, my understanding of the price, terms and conditions of settlement. The price we are to pay for pig-iron is nineteen dollars per gross ton of 2,268 pounds each—for such pig metal as we may require, should the purchase be beyond the 500 tons arranged for—delivered in our yard, at South Chicago, or at the 16th-street yard of the C. & N. W. R'y, in this city, for delivery at our works at North Chicago. The grade of this iron is to be number one, and such further proportion of higher grades as we may agree upon through the medium of this trial lot of 500 tons. The limits of phosphorus to be from $\frac{7}{100}$th- to $\frac{9}{100}$th- of one per cent., averaging $\frac{8}{100}$th- of one per cent. of phosphorus. Silica, from 1¾ to 2½ per cent.; other details of analysis to be such as to make the iron in every respect first-class Bessemer metal.

Settlements to be from our weights at our works and at 2,268 pounds per ton where cast in sand as I assume all of this iron is to be.

Payments to be made on the fifteenth day of the month following the month of delivery for all iron delivered the previous month and in our four-months notes, without interest, with the option of this company to discount such paper at the rate of six per cent. per annum and pay cash on the settlement day in lieu of the four-months notes referred so.

546 Trusting this 500 tons of iron will be forwarded promptly, and that I may hear from you at an early day in reply to this, and the confirmation of which will perfect the sale of the 500 tons, with our option for 2,500 or 5,000 tons above referred to, at the same price and upon the same terms and conditions of settlement as this 500 tons, and for such time of delivery as we may be able to agree upon, I am

Very truly yours, O. W. POTTER, *Pres't.*

CHICAGO, *May* 6, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., city.

DEAR SIR: Referring to yours 28th Apr., in matter of pig-iron, we have delayed hoping for report of analysis and that iron would be acceptable—our Mr. Cherrie will be over during the morning probably and will see you in the matter.

Yours truly, CHERRIE & CO.
(CLARK.)

ST. LOUIS, MO., *May* 6, 1884.

Messrs. Cherrie & Co., 90 Dearborn street, Chicago, Ill.

DEAR SIRS: Replying to yours of the 1st, we now enclose formal order for the rails therein referred to; get them off as soon as you can, and it will be all right.

Will you ask Mr. Potter if he can furnish us with 30 tons of seconds, Missouri Pacific 56-lb. standard to be drilled their drilling, and credit us with the quantity of seconds, as against the quantity he has a right to deliver us under contract, whether made from 59-lb. or other patterns.

O. L. GARRISON, *Sec'y.*

Enclosures.

Referred to John C. Parkes, G. M., &c.

CHERRIE & CO.

547 CHICAGO, *May* 6, 1884.

Mess. Cherrie & Co., Chicago, Ill.

GENTLEMEN: Your requisitions for rails for Wabash and Missouri Pacific railways for the month of May has been received. Our data shows we have already furnished 500 tons of the amount you are entitled to for the month of May. Will you, therefore, please say which we shall make the amount of one thousand tons full for the Wabash, or part of the amount for the Wabash and part for the Missouri Pacific; your early reply will oblige.

Very truly yours, JOHN C. PARKES,
Gen'l Manager.

ST. LOUIS, *May 8th*, 1884.

Jno. C. Parkes, gen. m'g'r, Chicago, Ill.

DEAR SIR: Upon receipt of the 518 tons pig-iron shipped you, if you will kindly send us your weights we will be obliged. I believe Messrs. Cherrie & Co., have handed you bills of lading covering shipment of this lot some days ago.

Yours truly, O. L. GARRISON, *Sec'y.*

ST. LOUIS, MO., *May 8th*, 1884.

Jno. C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: I hope to have the pleasure of seeing you Saturday morning at your office. There is an arrangement I am very desirous of making with reference to the rolling of our rails for the month of May, and I would prefer to talk it over in person with you or Mr. Potter.

Mr. Simpson was quite surprised at Pilot Knob yesterday
548 by an arrival from one of the little Shetlands that he did not consider in such a very delicate condition. The expected one still holds out and has the appearance of being well fed.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *May 8th*, 1884.

O. L. Garrison, sec'y St. Louis Ore — Steel Co., St. Louis, Mo.:

Will not roll Missouri Pacific steel next week or until we hear from you.

JNO. C. PARKES,
Gen. Manager.

CHICAGO, *May 10th*, 1884.

Mess. Cherrie & Co., Chicago, Ill.

GENTLEMEN: Please ship to us at our South Chicago works 500 tons more pig-iron, the same as the last 500 tons you shipped us, and upon the same terms and conditions make shipments at your earliest possible convenience, sending notices of shipment and car numbers to this office. Please advise me about how soon you can fill the order, and how soon you will commence shipments, and oblige

Resp'y yours, JNO. C. PARKES,
Gen. Manager.

CHICAGO, *May 12th*, 1884.

Mr. J. C. Parkes, gen'l manager North Chicago Rolling Mill Co., city.

549 DEAR SIR: In reply to yours of the 10th, would state that we will do all that we possibly can to rush forward the 500 tons of pig metal, and under advice of last Saturday they loaded five cars that day. We will rush it all off at once.

Yours truly, CHERRIE & CO.

ST. LOUIS, MO., *May 13th*, 1884.

John C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: Enclosed we hand you an order for 500 tons of Missouri Pacific standard 56-lb. rails. I hope you will find it convenient to roll these rails, together with the other 500 tons you have, quite promptly, so we can get them into our accounts against the Missouri Pacific for this month. We will be obliged to wait for our pay until July the 20th if they do not reach St. Louis before the 1st of June, and I am satisfied you will help us out all you can. Wabash matters are still in a very unsatisfactory shape. I think they are moving very cautiously, and the public are not fully informed of just what is being done, although they suspect something. Papers here yesterday were full of the receivership. We will not give the Wabash any rails until this matter is definitely settled. We are on the right side now, and intend to keep there. Won't you kindly say to-morr-w when you will commence rolling the Missouri Pacific 56, so we can have the inspector on hand, and oblige—

Yours truly, O. L. GARRISON, *Sec'y.*

550 CHICAGO, *May* 14, 1884.

Messrs. Cherrie & Co., 94 Dearborn St., Chicago, Ills.

GENTLEMEN: Please ship us 500 tons more pig-iron same as last

lot shipped us from the St. Louis Ore & Steel Co., ship 250 tons of this iron consigned to E. C. Potter, sup't South Chicago, and 250 tons consigned to N. C. R. M. Co., Chicago, Ill. Please let me know if you can do this and oblige.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

CHICAGO, *May* 14*th*, 1884.

Mr. John G. Parkes, gen. mangr. North Chicago Rolling Mill Co., Chicago, Ill.

DEAR SIR: Yours of the 14th at hand. We will ship you another 500 tons iron at once; same as previous lot from the St. Louis Ore & Steel Co., 250 tons of it to be sent to your south mill and 250 tons to the north mill, care of the C. N. W. R'y at 16th street.

Yours truly, CHERRIE & CO.

CHICAGO, *May* 14*th*, 1884.

Mr. O. W. Potter, pres't North Chicago Rolling Mill Co., city.

DEAR SIR: In answer to yours of Apr. 28th, would state that we book your order for five thousand—5,000—tons of Bessemer pig-iron as per the conditions stated in your letter, except the item of silica, which we think the metal we are supplying will run higher, but the sample lot of 500 tons we sent you is about a fair
551 average of what the iron will be, we also state, that if at any time the iron should not prove up to the standard that you are at liberty to cancel the contract for the balance due. The idea being, that you can take the iron up to that amount if it suits your work, if not, you need not. But it is understood and agreed that you are to take, receive, and settle for all that is on the way between the St. Louis mill and your mill at South Chicago, should you give us notice that the metal is not coming up to the standard, and that you do not require any more. I believe that this is clear enough and as we talked the matter over yesterday.

Yours truly, CHERRIE & CO.

CHICAGO, *May* 14, 1884.

Cherry & Co., 94 Dearborn St., Chicago.

GENTLEMEN: I have yours of the 14th in reply to mine of April 28th, relative to pig metal of the St. Louis Ore and Steel Company for Bessemer purposes—your letter covers more than I want. I do not want our order entered for 5,000 tons of the iron to be taken, if it suits us, for the very reason that it may suit us, and we not want it; but what I do want is the option to order in 500-ton lots, as we want it, on the terms and conditions named in my letter of the 28th of April, and if we want 2,500 or 5,000 tons we can continue our orders as herein stated until we have taken 2,500 or 5,000 tons. My reason for this being that if for any reason our own furnaces should be able to supply our wants fully before we can use up 5,000 tons I do not want to in any way be under obligation to take it as I would be if the iron suited us under your letter of May

14th. My judgment, however, is we shall use the entire
552 5,000 tons talked of before our furnaces can keep us fully supplied, but I cannot obligate myself to take it only as herein indicated.

Yours very truly, O. W. POTTER, *Pres't.*

ST. LOUIS, Mo., *May* 14, 1884.

O. W. Potter, pres't N. C. R. M. Co.

Would you oblige us by delaying deliveries of rails for this month if we find it desirable and can let us know positively this afternoon or to-morrow morning we could arrange so as not to throw the 1,000 tons into any one month, but say into two months. Answer quick, please.

O. L. GARRISON, *Sec'y.*

CHICAGO, *May* 14, 1884.

O. L. Garrison, sec'y St. Louis Ore and Steel Co., St. Louis, Mo.

Your message this date received and we will comply with your request.

O. W. POTTER, *Pres't.*

(Copy.)

ST. LOUIS, *May 14th.*

O. W. Potter, Esq., pres't:

Telegram received.. Much obliged; will advise you about Missouri Pacific in a few days.

O. L. GARRISON.

CHICAGO, *May* 15, 1884.

Mr. O. W. Potter, pres't North Chicago Rolling Mill Co., Metropolitan block, city:

Yours of the 14th at hand and contents noted, which is
553 satisfactory to us, and we so understand your order that you are not bound to take the full 5,000 tons unless you want it, but we limit the amount at the price named to 5,000. Of course we reserve the same privilege of notifying you should we desire not to deliver the full 5,000 tons, but we do not think this is likely; and should we be advised by the steel company of anything of that kind, we will give you ample notice, so that you can cover your wants in time.

Yours truly, CHERRIE & CO.

ST. LOUIS, Mo., *May 15th*, '84.

O. W. Potter, Esq., pres. N. C. R. M. Co., Chicago, Ills.

DEAR SIR: We telegraphed you yesterday as follows: "Would you oblige us by delaying delivery of rails for this month, if we find it desirable and can let you know positively this afternoon or to-morrow morning. We could arrange so as not to throw the 1,000 tons into any one month, but say into two months. Answer quick, please." And during the afternoon had your reply: "Your message

of this date received, and we will comply with your request." We are extremely obliged to you for meeting us as you have. We would like to take a few days to determine just how many rails we want to give the Missouri Pacific this month. I believe their pattern, No. 568, is the same as other pattern you are rolling on during the month. Will you kindly say to me if it would be convenient for you to give us 200 tons of this pattern, which would apply on their contract. A quantity that they want to use on one of their Texas divisions. We can very well let them wait until next month, but if it makes no difference to you it might be to our advantage
554 to turn them in during the present month. The quantity would be something under 200 tons. Kindly let me hear from you at your convenience. Regarding pig-iron, when I was in your city on Saturday last, your Mr. Parkes requested that we ship 500 tons immediately, and I answered that I would telegraph at once to commence shipment. As it was then noon-time my message reached the works during the afternoon, and cars had to be provided, and they only came to us Monday noon. We began loading at once, but the Jupiter was not making such iron as we cared to ship you owing to her recent stoppage, therefore we do not get the shipments complete until to-day, Thursday, about noon.

I said to Mr. Parkes it would be impossible to get the lot off before Wednesday night, so you will see we are only about twelve hours behind time. We should like to have a little more time in making these deliveries, because of the fact that cars are frequently slow in coming to us.

Yours respectfully, O. L. GARRISON, *Sec'y.*

CHICAGO, *May 16th*, '84.

O. L. Garrison, Esq., sec'y St. L. O. & S. Co., St. Louis, Mo.

DEAR SIR: Your favor of May 15th to Mr. Potter in relation to Wabash and Missouri Pacific steel, and other matters received.

In relation to the 200 tons for the Missouri Pacific would say that 56-lb steel is the same standard section of the other rails we are rolling for them. I think it would be our preference to let this 200 tons run over into another month, if it would be just as con-
555 venient to you, but if you find it absolutely necessary to have it between the 26th and 30th of this month, if you will let me know in time, I think very likely we may be able to accommodate you, and we shall be very glad to do so if possible.

In relation to pig-iron I do not see but you have done everything you can in this direction, still it has not reached us in time to prevent us from having to shut down our cupolas for want of the metal. Since seeing you I have ordered another 500 tons of pig-iron, which you undoubtedly have ere this from Mess. Cherrie & Company.

The first installment of 9 cars on the second 500-ton lot instead of going to South Chicago direct was delivered at our Chicago works by some blunder of the railroad, I presume, and it has thrown us out of metal at our South Chicago works. I will endeavor to give

you more margin in the future, and hope you will get the next 500 tons through promptly.

Yours resp'y, JOHN C. PARKES,
Gen. Manager.

CHICAGO, *May 17th*, 1884.

John C. Parkes, Esq., gen'l manager, Chicago, Ill.

DEAR SIR: Yours of the 16th at hand, and contents noted. We will not call upon you for the small quantity of 56-lb rail of the Missouri Pacific pattern unless we find it really necessary to do so. We required this amount to fill in some little orders left undelivered on their past requisition, and thus even up to date.

Under date of yesterday Mr. Cherry advises us that he has arranged with you to take 5,000 tons of our pig-iron at price of $19.00 per ton on cars Chicago, your option to pay in four months
556 paper or discount at the rate of six per cent. per annum, and that you will give orders weekly in time for the filling of the amounts you require. It being understood that we are to furnish this iron as made direct from the Jupiter; and if for any reason the furnace should stop operation we will supply the quantity remaining undelivered from stock in yard; and if at any time during delivery of this 5,000 tons you should find the iron not suited for your requirements, you have the privilege of canceling the *the* balance remaining undelivered, such amounts as may be en route to you at the time of notice being given to be received and paid for. I have no doubt whatever but what the iron will prove eminently satisfactory. Of course it shall be our aim to only give you such iron as you want, and in fact I don't see how we could make any different grade from that which has gone to you, because there is no change in material. We give you the option to terminate the contract should you have occasion to find fault with the iron, because the price we sell at leaves absolutely nothing in the way of profit to us. I had hoped to hear something from Mr. Rattle by this time, that we might come to a settlement of past differences. Am anxious to do this during the present month, and presume you are equally desirous of disposing of the much-vexed question.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *May* 21, 1884.

O. L. Garrison, Esq., sec'y St. Louis Oré and Steel Company, St. Louis, Mo.

MY DEAR SIR: Mr. Parkes has handed me your letter to him under date of the 17th inst., and to that part referring to the
557 5,000 tons of your pig-iron. I desire to call your attention to the two letters enclosed, which are copies of the letters which have been written by me to Mr. Cherrie on this subject in which you will notice in the letter under date of May 14th, that I desire him to understand specially that we do not arrange to take 5,000 tons of pig-iron.

It may be out of place to send these letters to you, but I feel it

my duty to do so in view of the impression in your mind as conveyed to Mr. Parkes in your letter of May 17th.

Yours very truly, O. W. POTTER, *Pres't.*

ST. LOUIS, MO., *May* 29, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: I was absent from the office when your favor of the 21st came. Regarding the pig-iron transaction through Messrs. Cherrie & Co. the two letters you enclosed as copies of communications sent them are certainly very clear and not capable of any misconstruction. When I was last in Chicago, your letter of April 28th was shown me and I remarked to Mr. Cherrie that it would be quite impossible for us to furnish silicon as low as your requirements, but in other respects your proposal was entirely satisfactory, and to meet your wishes in the matter, I told him to say to you we would furnish you such quantity of iron as you might require up to 5,000 tons on the terms expressed in your letter of April 28th with the understanding that if at any time you wished to discontinue shipments you could do so by taking such quantities as might be en
558 route—and at no time could this quantity exceed 200 tons. It is a trade we would not ordinarily make, but as we are giving you this iron at cost and would have no trouble whatever to dispose of the metal at the same price in other directions, we were quite willing that the privilege should rest with you of discontinuing shipments at any time.

Does this not fully meet your wishes in the matter? I would say to you that we have authorized Messrs. Cherrie & Co. to invoice this iron to you, and your settlement with them will be satisfactory to our company.

Yours respectfully, O. L. GARRISON, *Sec'y.*

CHICAGO, *May* 31*st*, 1884.

Mess. Cherrie & Co., Chicago, Ill.

GENTLEMEN: You will please furnish this company 500 tons more of the St. Louis Ore Co.'s pig-iron the same as the last lots you have been furnishing us, and upon the same terms and conditions. This is written to confirm verbal order given to you the 27th inst. Consign the pig-iron to this Co., care of E. C. Potter, sup't, South Chicago, Ill., and oblige.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

CHICAGO, *June* 1*st*, 1884.

Jno. C. Parkes, Esq., gen. m'g'r N. C. R. M. Co., city.

DEAR SIR: Your order of May 31st for 500 tons of Bessemer
559 iron, sale, conditions, etc., as previous orders, except as to the price, which is to be $18.75, is received, and the iron is now on the way to the South mill.

Your order of to-day through telephone for 500 tons additional on same terms as this was wired to St. Louis promptly with in-

structions to rush it forward. We will have it all shipped by to-morrow night.

Yours truly, CHERRIE & CO.

CHICAGO, *June 3rd*, 1884.

St. Louis Ore & Steel Co., St. Louis, Mo.

I understand we are at liberty to settle with Cherrie & Co. for all pig-iron received from your Co. Am I right in this?

O. W. POTTER, *Pres't.*

Paid.

ST. LOUIS, *June* 3, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: Your telegram, reading as follows, just received: "I understand we are at liberty to settle with Cherrie & Co. for all pig-iron received from your company; am I right in this?" In reply, I beg to say that we authorize you to make settlement with Messrs. Cherrie & Co. for all shipments of pig-iron by our company, this authority to remain good until you are otherwise advised.

It is now quite late, nearly half past five, and I doubt if a telegram would reach you in time to-day, hence write you a reply.

Yours respectfully, O. L. GARRISON,
Sec'y & Treas'r.

560 CHICAGO, *June* 5, 1884.

Mess. Cherrie & Co., Chicago, Ill.

DEAR SIRS: From a verbal conversation I had with you this p. m., we understand that you are to deliver us, immediately, two thousand tons of pig-iron of the same kind and quality you have been delivering us heretofore from the St. Louis Ore & Steel Co.'s furnaces, and for which pig-iron we are to pay you the sum of eighteen 12½-100ths dollars ($18.12½) per ton of 2,268 lbs. for cars Chicago or South Chicago, Ill., as we may instruct. Settlements to be made from our weights and in cash, immediately upon receipt of the iron at our works and its having been weighed up; your acknowledgment of the receipt of this and that it is acceptable to you will complete the arrangement.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

CHICAGO, *June 6th*, 1884.

John C. Parkes, Esq., gen. man'g'r North Chicago R. M., Chicago, Ill.

DEAR SIR: In answer to yours of the 5th, would say we have booked your order as stated therein for 2,000 tons of the St. Louis Ore & Steel Co., Bessemer pig-iron, same as you have been receiving from them, and forward this to them for prompt shipping on price, terms, etc., and conditions named in your letter.

Yours truly, CHERRIE & CO.

561 ST. LOUIS, *June 10th*, 1884.

John C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: Enclosed please find our orders, 915, 916 and 917, aggregating 500 tons of rails, for the Wabash railway, which we will be greatly obliged if you will roll as promptly as possible. Please consider all orders we have heretofore given you for the month of May as canceled.

I expect to send you orders to-morrow for 1,000 tons of 63-lb. rail, the Missouri R'y pattern, which are to go to the Wabash road, and as we like to get our delivery into the Wabash as early in the month as possible, we will thank you to give the same your attention as soon as you can.

Yours truly, O. L. GARRISON, *Sec'y.*

Enclosures.

JUNE 12, 1884.

Messrs. Cherrie & Co., Chicago, Ill.

GENTLEMEN: You will please ship us at once 1,000 tons of pig-iron the same as you have shipped us heretofore upon the same terms and conditions as that you have already shipped except as to price—the price for this lot to be eighteen dollars per ton, 2,268 pounds f. o. b. cars Chicago or South Chicago.

Resp'y, yours, JNO. C. PARKES,
Gen. Manager.

Book this order.

Orders for the met*tle* has been sent to St. Louis.

R. M. C.

562 (Copy.)

CHICAGO, *June 12th*, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Your favor of June 10th received and contents noted. We have entered the order for 500 tons 59-lb. Wabash rails for next week's delivery, and hope to be able to carry it out.

The order for 1,000 tons 69-lb. Missouri Pacific rails came in this morning. We cannot say just now when we can make these rails, but some time during the month, but cannot tell just now when. Our hands are pretty well tied up, and it will be pretty hard for us to make early deliveries this month, but will do the best we can for you.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

ST. LOUIS, *June* 13, '84.

John C. Parkes, Esq., gen. manager, Chicago, Ill.

DEAR SIR: Replying to yours of yesterday, we now enclose you copies of orders 887 and 888, for 1 car-load of 56, and one car-load of 63 lb rails. Our record shows the original orders having been sent you May 13th. Will you kindly indicate by to-morrow's mail, how soon you can fill these orders?

In regard to filling our orders for 1,000 tons of 63-lb rails for the Wabash road, if you find there is going to be any difficulty in getting them out before the 25th of this month, won't you kindly carry the order over into the first part of July and roll it the first week of the month? We don't want to be inconvenienced in not getting our pay from the Missouri Pacific road in case the rails should leave your mill so late in the present month that we
563 could not get our voucher by the last of the month so as to bring the payment by the 15th of July, nor do we want the delivery so late in July as to let the Wabash complain of late delivery.

Yours truly, O. L. GARRISON, *Sec'y.*

Mr. P.: Maybe you think I am hard to please?

O. L. G.

CHICAGO, *June* 14, '84.

O. L. Garrison, Esq., secretary St. L. O. & S. Co., St. Louis, Mo.

DEAR SIR: Your favor of June 13th received. I have already written in relation to your car-load orders. In regard to filling your order for 1,000 tons 63-lb. rails for the Wabash road and the 500 tons 59-lb. pattern, would say we intend to roll the 500 tons 59-lb. rails next week and think we can roll the 1,000 tons of 63-lb. early, the week following which will bring them on time for this month's delivery by the 25th of this month—in case we cannot accomplish this, I will endeavor then to carry them over until the first week in July and hope to be able to roll them at that time.

I have not thought you were hard to please. We are often compelled to do things which may seem annoying at times but in your case we have not experienced any such trouble yet.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

564 ST. LOUIS, MO., *June* 14, '84.

John C. Parks, Esq., general manager, Chicago, Ill.

DEAR SIR: The Wabash railroad ask us to please have their agent at South Chicago advised as to the weight of rails when you commenced shipment. They want to keep the 59 and the 63 pound rails separate. I rather assume that the shipping bills would show this, but take the precaution of advising you as they have asked me to do.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *June* 16, '84.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Your letter of June 14th received. We will endeavor to advise the agent of the Wabash at So. Chicago of the different weights of rails we ship them, but as you — our shipping bills will give them this data without anything further.

Our hands are now pretty well filled up and we have concluded

to make the 500 tons of 59-lb. Wabash this month and put the 1,000 tons 63-lb. rails over until the first week in July as it now seems to me impossible for us to get it in as early as the 25th inst. as per your request.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

ST. LOUIS, *June* 17, '84.

John C. Parkes, Esq., gen'l manager, Chicago, Ills.

DEAR SIR: Replying to yours of the 16th the Missouri Pa-
565 cific have asked Mr. A. W. Fiere to inspect the 500 tons of 59-lb. rails you are to make for the Wabash kindly permit him to do so.

We note that you prefer to make the 1,000 tons of 63-lb. rail for June delivery the first week in July, which will answer our purpose.

Yours truly, O. L. GARRISON, *Sec'y.*

ST. LOUIS, MO., *June* 23, 1884.

John C. Parkes, Esq., gen. manager, Chicago.

DEAR SIR: Have you any Missouri Pacific 63-lb. first quality rails on hand, or will you have any within the next ten days? If so, we would like to get a couple of car-loads, and will send you order for them.

Yours truly, O. L. GARRISON, *Sec'y.*

CHICAGO, *June* 24, 1884.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Replying to your favor of June 23d, would say we have no Missouri Pacific 63-lb. rails on hand at present, but we expect to be rolling that weight of rail some time next month, and can then ship the two car-loads, if that delivery will answer.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

CHICAGO, *June* 26, 1884.

Messrs. Cherrie & Co., Chicago, Ill.

GENTLEMEN: As per verbal arrangement made with you
566 yesterday, I understand that you are to furnish this company, for immediate delivery, 500 tons more of St. Louis Ore & Steel Co.'s pig-iron, the same as heretofore furnished. The price of this 500 tons to be $18.00 per ton of 2,268 lbs. The terms and conditions of settlement to be the same as the last 1,000 tons purchased from you. The delivery to be at the 16th-street yard of the C. & N. W. R'y, Chicago.

Your confirmation of this arrangement will complete the contract.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

ST. LOUIS, *July* 5, 1884.

R. J. Lackland, Esq., pres't Boatman's Savings bank, city.

DEAR SIR: Enclosed please find bills of lading for 36 cars of pig metal, shipped the North Chicago Rolling Mill Co., Chicago.

This money was to have been collected by Messrs. Cherrie & Co., and the draft which we gave you at fifteen days' sight was to be paid from the funds derived from the collection; but Messrs. Cherrie & Co. tell us that as they were involved in financial troubles on the 3d of July, and the draft not having been presented for acceptance, they return all the papers to us and request that we make collection direct from the North mill. We have revoked our authority to the North mill to pay Cherrie & Co., and will ask the mill to either remit us direct that we may pay you, or remit the $7,500 to you direct.

567 This I will arrange in person on Monday, when I am in Chicago. In the meantime we want the bills of lading to be in your hands.

Yours truly,

(Signed) O. L. GARRISON,
Sec'y and Treas'r.

ST. LOUIS, Mo., *July* 5, 1884.

O. W. Potter, Esq., pres't North Chicago R. M. Co., Chicago, Ills.

DEAR SIR: Enclosed please find invoice No. 1099 for $9,000, covering shipment of thirty-six cars of pig-iron on the last order received from you through Mess. Cherrie & Co.

Yours respectfully, O. L. GARRISON,
Sec'y & Treas'r.

Enclosures.

Copy of Letter Made July 6, 1887.

ST. LOUIS, Mo., *July* 11*th*, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago.

DEAR SIR: During Mr. Garrison's recent visit to your city, he explained to you the situation we were in regarding a large amount of money due us by Cherrie & Co., and also funds that for the present appear to be without our reach for ore delivered you during the month of June. These amounts, and other amounts, which should be paid us promptly, and have not been, have somewhat inconvenienced us, and we were not enabled to send you a remittance, as we should have done to-day, for your June rail account, and I ask you as a special favor if you won't let the matter rest for a little while, you having in your possession funds of ours from pig metal shipped you, also the July-ore that is arriving which is of course for account of our company.

568 We dislike very much to have to make this request, but it is unavoidable just now. Some of our railroad friends here are delaying settlements, else we should not have been obliged to make above request of you.

Yours truly, E. A. HITCHCOCK, *Pres't.*

Copy of Letter Made July 6, 1887.

ST. LOUIS, Mo., *July 12th*, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: With the large amount of money that we have tied up, and slow collections from some of our friends, it may be inconvenient for us to respond promptly for any debts that we may incur, and the object of this is to ask you if you will be willing to make for the receivers of the Wabash, St. Louis and Pacific R'y Co. 2,000 tons of 63-lb. rails during the present month, or, if this is more than you can get out, then 1,000 tons, and bill direct to them at a price that we might direct you to charge, and pay us the difference above what you charge our company, or the profit we have in the business. Should we hear from you that you do not care to do this, we will apply to other parties, but would first prefer to let you make the rails. If you do not care to make them, would you be willing to cancel that much of your contract with our company? I do not think there is any question about the payments promptly by the receivers from this time forward, and we will arrange with them to take the rails from you and pay you on the tenth of the month, if the arrangement above referred to can be made.

As we want to decide promptly on this matter, won't you
569 kindly telegraph us your views? We have said to the Missouri Pacific Railway Company that until they are in a position to pay cash for their rails we will make no further deliveries to them. This will probably curtail shipments during the months of July and August, for their treasurer tells me it will be fully the 1st of September before they are prepared to pay their account promptly.

Yours respectfully, O. L. GARRISON, *Sec'y.*

CHICAGO, *July 14th*, '84.

O. L. Garrison, Esq., sec'y St. Louis Ore & Steel Co., Saint Louis, Mo.

Mr. Potter has your letter of the 12th inst. He prefers a personal interview with yourself and Mr. Hitchcock. When could you meet him here? RICHARD C. HANNAH, *Sec'y.*

Collect.

ST. LOUIS, Mo., *July 24th*, 1884.

R. C. Hannah, Esq., sec'y N. C. R. M. Co., Chicago, Ills.

DEAR SIR: Will you kindly render us statement of weights per invoice we sent you for five hundred tons pig-iron the fore part of the present month. There were 36 cars in the shipment, and I would also be glad to know what quantity of iron remained unsettled for with Messrs. Cherrie & Co. at the date of our notice to you to make no further settlement with them. I only ask this information for the purpose of getting our accounts in shape.
570 If you can render us statements of account on the pig metal I will be greatly obliged.

Yours truly, O. L. GARRISON,
Ag't for Provisional Receiver.

ST. LOUIS, Mo., *July* 25, '85.

O. W. Potter, pres't:

Expecting momentarily to hear from Receiver Humphreys with positive instructions for the 2,000 tons. Meanwhile roll 200 tons for Missouri Pacific and take your pay from ore arriving after 21st, which, of course, belongs to the receiver. I estimate there will be enough to pay for these rails, failing which, I will pay balance due in accordance with contract. Please answer quick.

E. A. HITCHCOCK.

CHICAGO, *July* 25, '84.

E. A. Hitchcock, pres't St. L. O. & S. Co., St. Louis, Mo.:

I have your telegram relative to 200 tons of rails for Missouri Pacific have also just received letter from Thompson, cashier Boatmen's savings bank that would like explained before we answer relative further deliveries of rails.

O. W. POTTER, *Pres.*

Collect.

BOATMEN'S SAVINGS BANK, ST. LOUIS, *July* 24, 1884.

O. W. Potter, Esq., pres't North Chicago Rolling Mill Co., Chicago, Ill.

DEAR SIR: This bank loaned the St. Louis Ore & Steel
571 Company $7,500, on a warehouse receipt for 500 tons of iron. About the last of June they reported to us that they had sold to you this iron. In order to enable them to ship this iron, we surrender the warehouse receipt and in a few days thereafter the ore & steel company handed us a bill of lading for 36 car-loads, five hundred tons, consigned to you, saying that they had instructed you to remit $7,500 to this bank. Not having received this money we hereby notify you that we look to you for payment of the same.

Very truly, WM. H. THOMPSON, *Cash'r.*

CHICAGO, *July* 25, 1884.

W. H. Thompson, Esq., cashier Boatmen's savings bank, St. Louis, Mo.

MY DEAR SIR: I am in receipt of yours of the 24th inst., and have had a copy of it made and sent to Mr. Hitchcock, this letter being the first intimation we have ever had that you had any interest in pig-iron consigned to us by the St. Louis Ore & Steel Co. We have never received such instructions as you name, and you need not look to us for the $7,500 you refer to.

You are at liberty to show this letter to Mr. Hitchcock, and we would like to have you furnish us with copy of any instructions of the name or nature you refer to.

Very truly yours, O. W. POTTER, *Pres't.*

572 (*Telegram.*)

ST. LOUIS, *July* 25, 1884.

O. W. Potter, Esq., Chicago, Ill.

Thompson's letter has reference to last five hundred tons pig-iron shipped you and has nothing to do with the two hundred tons rails which I asked you to furnish me as receiver, and against which you will have all ore that may have arrived since morning of the 22d, and now in transit, which I estimate will amount to at least forty-five hundred dollars, and the balance for rails I will pay you as per contract. If these rails are not shipped, parties here may attempt to break contract as explained to you personally.

E. A. HITCHCOCK.

CHICAGO, *July* 25, '84.

E. A. Hitchcock, receiver St. Louis Ore & Steel Co., St. Louis, Mo.

I must decline to make the two hundred tons of rails on the kind of payment you propose.

O. W. POTTER, *Pres.*

Collect.

ST. LOUIS, *July 26th*, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ills.

DEAR SIR: From enclosed letter of Mr. Jas. F. Howe, gen. ag't for the receiver of the Wabash, St. Louis and Pacific R'y, you see they are willing to pay cash on the 13th of the month following delivery for 500 tons of steel rails of the 63-lb pattern of Missouri Pacific R'y Co. for immediate delivery, and will require
573 1,200 tons for August delivery, but what we deal with now is only the 500 tons. Will you make the rails at once for us, sending your bill to the Wabash and collecting direct from them.

You may retain this authority of the Wabash if you desire, as we have made a copy of same.

Yours truly, E. A. HITCHCOCK, *Pro. Rec.*

Enclosure.

ST. LOUIS, Mo., *July 26th.*

E. A. Hitchcock, receiver St. Louis Ore & Steel Co.

DEAR SIR: In reply to yours just received, as requested by you we will pay for the rails ordered from you under contract with the Mo. Pacific and referred to in my letter of the 25th and 26th July as follows: By remittance to the North Chicago rolling mill at the rate of $35 a ton, said remittance to be made not later than the 13th of the month for the rails shipped to us the preceding month, and what is left of the remaining $2.50 per ton to be paid to you after deducting from same such charges for freight from Chicago as it is decided between yourself and Capt. Hayes can be charged under the contract for furnishing the rails.

Yours truly, JAS. F. HOWE, *Gen. Ag't.*

JULY 24, '84.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co.

DEAR SIR: The Wabash, St. Louis & Pacific R'y Co. are
574 much in need of 2,000 tons of steel rails for immediate delivery, and I am authorized and instructed by the receiver of this company to purchase of you the said 2,000 tons of steel rails, and for which we will pay the price of $37.50 per ton in cash the 10th day of the month following the month of delivery, and we will receive the said 2,000 tons of rail from the North Chicago Rolling Mill Co. delivered at their works at Chicago and pay them the price of $35.00 per ton for said rails at Chicago and on the 10th day of the month following the month of delivery, should you arrange for them to make the deliveries to us instead of to the St. Louis Ore & Steel Co. of which you are now receiver.

Yours respectfully, —— ——.

The above was handed to Mr. Hitchcock who undertook to get it signed by the Wabash and returned to us but failed to do so, and sent us instead letter of Mr. Howe dated July 26, '84.

ST. LOUIS, *July* 26, 1884.

O. W. Potter, Esq., pres't North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: I have seen your letter of yesterday to Mr. Hitchcock, and also copy of a letter you have received from the Boatman's savings bank, and now beg you to enclose copy of the communication given the Boatman's bank on July 5th. The facts are fully stated in this letter. It is true we intended to pay the Boatman's savings bank the seventy-five hundred dollars that we would receive from you for this iron, and I also beg to state that during my conversation with you in your office I alluded to the
575 fact that the shipment of last five hundred tons of iron to you was from a lot that we had pledged at the Boatman's, and that we would want to pay them the funds when we received same from you; but the accounts between our respective companies were in such shape at the date of my visit to your office, that we could not then determine whether or not there was sufficient in your hands to fully protect you on the bill you had against our company, and of course I did not expect you to remit any funds to us until you had sufficient property in your hands belonging to our company to fully pay your account against us. But I think that more than a sufficient quantity of ore went to you, together with the balance due on pig metal shipped prior to the 500-ton lot in question, and not settle for with Cherrie & Co. to fully pay your bills. This we can more definitely know when the statement of car numbers which I have sent to Mr. Hannah is filled in and returned to us.

I have called in person on Mr. Lackland to-day, and called his attention to my letter to him of July 5th, which I think clearly sets forth the understanding between the bank and our company. Of course we would like you to understand the statement I made

to you as notice of the fact that the proceeds of the iron belong to the Boatman's savings bank, especially so as against any attachments that have been served on you as against our company. If you have enough in your hands to fully satisfy your claims against our company, we are specially desirous that any surplus should be paid to the bank.

Yours respectfully, O. L. GARRISON,
Sec'y and Treas'r.

Enclosure.

576 ST. LOUIS, Mo., *July 29th*, 1884.

O. W. Potter, Esq., pres't North Chicago Rolling Mill Co., Chicago, Ill.

DEAR SIR: We enclose you formal orders covering the 500 tons of Wabash rails you are to make at the present time, and are greatly obliged to you for arranging this matter for us. We hope in a few days to be in shape to carry forward our contracts without further interruptions. The inspector should be with you in the morning, as we have sent him word to go up on to-night's train.

Please destroy all other orders now in your hands for Wabash rails.

Yours truly, O. L. GARRISON,
Ag't for Prov. Rec.

Enclosure.

CHICAGO, *July* 29, 1884.

E. A. Hitchcock, prov. receiver St. L. O. & S. Co., St. Louis, Mo.:

Will commence rolling the 500 tons Wabash sixty-three to-morrow morning; have applied to Wellington for cars. Will you have inspector here? Answer quick; shall we consign as per your orders 946 and 947?

O. W. POTTER, *Pres't.*

Pay.

CHICAGO, *July* 30, 1884.

E. A. Hitchcock, prov. receiver St. L. O. & S. Co., St. Louis, Mo.:

I have no reply to my message of yesterday relative to shipping instructions for the five hundred tons of Wabash rails. Answer quick.

O. W. POTTER, *Pres't.*

Collect.

577 CHICAGO, *July* 30.

E. A. Hitchcock, prov. receiver St. L. O. & S. Co., St. Louis, Mo.:

Have three hundred tons Wabash made ready for shipment. Schultz, inspector, declines to receive them; says they are not Missouri Pacific pattern. They are the same as all sixty-three-pound rails we have made and shipped to the Missouri Pacific on your contract. He says angle bars fit perfectly, but rail is about one-sixteenth too low and flange about three-sixteenths too wide. In-

spector returns to St. Louis to-night to report and wait instructions; he will be at Wabash office at nine o'clock to-morrow morning. We have stopped rolling; shall we ship what we have made and wait instructions for balance?

Answer quick.

O. W. POTTER, *Pres't.*

ST. LOUIS, Mo., *July* 30, 1884.

O. W. Potter, pres't N. C. R. M. Co., Chicago:

Missouri Pacific people gone home for the day; will see them first thing in a. m. and wire you.

E. A. HITCHCOCK.

ST. LOUIS, Mo., *July* 30, 1884.

O. W. Potter, pres't:

Can you roll at once seventeen hundred tons 63-lb. Missouri Pacific standard rails for Wabash road, same as the 500 tons you are rolling on same terms as that order?

Wire answer, please.

E. A. HITCHCOCK, *Prov. Rec.*

578 ST. LOUIS, Mo., *July* 31, 1884.

O. W. Potter, pres't, Chicago, Ill.

DEAR SIR: Your telegram of the 30th regarding the 63-lb. Wabash rails came so late last evening that we could not reach the Missouri Pacific people, and I promptly so advised you. This morning we saw them early, and they refused to receive the rail from you, but we urged them to telegraph Mr. Talmage, who is now on the Eastern div. of the Wabash somewhere, and explain that the angle bars fit perfectly, hoping that when he knew this fact he would receive the number of tons of rails you have rolled. Up to this hour, 4 p. m., they have heard nothing from him, but are momentarily expecting an answer, and we sincerely hope it will be of such a nature as will let you forward these rails at once. Shultz, the inspector, made as fair a report to them as he could under the circumstances, and said he thought they could use the rails very nicely; but there was no one here who would assume that responsibility without first hearing from Talmage. We shall do all we can to have you relieved of these rails.

We have your telegram with reference to freight on ore, and await the coming of your letter to-morrow morning. We trust you will be able to take this additional burden off our hands, and in a very short time we will be in a position to clear up all matters.

Yours truly, O. L. GARRISON,
Ag't for Prov. Rec.

ST. LOUIS, Mo., *July* 31, 1884.

O. W. Potter, pres't:

579 We are trying hard to get Wabash to receive the rails, so far they decline. I don't find from our record that you have made any rails of this pattern save a few car-loads, of 63-lb.

weight for frog purposes: if we can get them to take what you have rolled, can you make balance to conform exactly to their templet? Some of your invoices have left off the weight of rail you have rolled for us; if you can direct to any particular shipment of 63's please do so. Will wire you later in the day.

E. A. HITCHCOCK.

CHICAGO, *July* 31, 1884.

E. A. Hitchcock, prov. receiver St. L. O. & S. Co., St. Louis, Mo.:

Find we have shipped 42 tons sixty-three pound to Missouri Pacific same pattern as we just rolled for Wabash. New rolls will be necessary to conform exactly to their templet, which means two weeks' delay at least; are they ready to wait that long? They should take the rails now loaded and ready to leave.

O. W. POTTER, *Pres't.*

67 pay.

Memorandum of Shipments of 63-Pound Rail Called for in Mr. Hitchcock's Telegram of July 31st.

63-lb. steel to St. L. O. & S. Co.

Jan'y 1st, 1884	$14\frac{140}{}$	tons.
April 23d	$14\frac{140}{}$	"
May 24th	$14\frac{140}{}$	"
	$42\frac{420}{}$	

580 CHICAGO, *July* 31, 1884.

E. A. Hitchcock, Esq., prov. receive- St. L. O. & S. Co., St. Louis, Mo.

MY DEAR SIR: Relative to the Wabash steel we stopped rolling for a road very much in want of rails, to make these for the Wabash, and we have this 280 tons on hand. The difference between the rails that we have made and the Mo. Pac. templet is so slight that the railway officials themselves could not tell the difference fifty feet away, these rails are drilled unlike anything we have to deliver here, and it is great injustice to us if we are not permitted to ship the rails. I hope you will see to it that there is no question about it, and oblige,

Very truly yours, O. W. POTTER, *Pres't.*

ST. LOUIS, MO., *Aug.* 1, 1884.

O. W. Potter, Esq., president North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: I am in receipt of your two letters of yesterday's date, the one referring to Wabash steel, the other to the freight on 171 cars of ore, and thank you very much for your expressed willingness to pay the freight on the latter as requested. I will send this letter over to Dr. Smith at once, and he will no doubt forward the ore without delay.

Regarding the Wabash steel, Mr. Garrison wrote you, last evening of the efforts we were making to induce them to take it, but I regret to say that this morning Mr. Talmage, general manager of the Wabash, telegraphed from Omaha positively declining to take the steel because of the report of the inspector, and at the same time insists upon our making immediate delivery not only of
581 the 500 tons you were rolling, but also of 1,700 tons in addition, for delivery of which he will not wait until you could prepare the rolls as you suggested in your late telegram. I can only say that I will use every possible endeavor in person with Mr. Talmage on his arrival here to-morrow or next day to induce him to take these rails off your hands. One difficulty that we will have to meet is that the inspector has reported to his principals that the rolls were old Northwestern rolls, and that it was impossible to make rails from them in accordance with their templet. We had an almost identical case with the Union Pacific, who left over 400 tons of rails on our hands, but as before stated, you may rest assured I will use every possible effort with Mr. Talmage in person to persuade him to take those rails off your hands.

The Missouri Pacific have called on us for the delivery under our contract of one thousand tons of 56-lb. rails such as you have heretofore rolled. They want them for immediate delivery, and I will thank you to telegraph me immediately on receipt of this whether or not you will roll these rails under our contract with you to be billed to me as prov. receiver, and to be paid for according to the terms of our contract on the 10th of the month following delivery. I would add that I have called on Dr. Smith to inform me in writing whether or not he would pay for these rails on the 10th of the month following delivery, and if your response is favorable and we send you the order, you may rest assured that I have such a promise in writing in my hands from Dr. Smith.

Yours very truly, E. A. HITCHCOCK,
Prov. Receiver.

582 CHICAGO, *August* 2, 1884.

E. A. Hitchcock, receiver St. Louis Ore & Steel Co., St. Louis, Mo.:

Your letter of yesterday received, we will make the fifty-six-pound rails.

O. W. POTTER, *Pres't.*

13 paid.

ST. LOUIS, *Aug.* 2, 1884.

O. W. Potter, Esq., pres't, Chicago, Ills.

DEAR SIR: Referring to my letter of yesterday's date, I now beg to say that Col. Talmage has not yet returned to the city, and I understand will not return until to-morrow, and I cannot therefore report any progress with reference to the matter of the Wabash rails.

Referring also to the last paragraph of the same letter, I am just in receipt of your telegram of this date, but regret to inform you that Dr. Smith, treas. of the Missouri Pacific R'y Co. has just sent a

reply to my note to him of yesterday, in which he states that he can make no promise relative to paying bills for steel rails until he is satisfied that certain claims which he assumes he has against the ore & steel Co. will be paid. As matters now stand, therefore, it is impossible for me at present to guarantee a fixed date of payment for such rails as you may roll under our contract, and I would therefore ask you to state what you are willing to do under the circumstances, my desire being, of course, to carry out the contract with you under the orders of the court.

Yours truly, E. A. HITCHCOCK,
Provisional Receiver.

583 CHICAGO, *August* 4, 1884.

E. A. Hitchcock, prov. receiver St. L. — & S. Co. St. Louis, Mo.:

Will Col. Talmage be in St. Louis to-morrow? If so, Mr. Parks will come down to-night. We find Missouri Pacific took three hundred tons of this same pattern in December of last year, and the Iron Mountain and Southern three hundred tons.

O. W. POTTER, *Pres't.*

Collect.

ST. LOUIS, *August* 4, '84.

O. W. Potter, Esq., pres't, Chicago, Ill.

DEAR SIR: In reply to your telegram of this date about the Wabash rails, I have just wired you as follows: "Col. Talmage will see Mr. Parkes at Grand Pacific hotel to-morrow morning. Am writing;" and I now beg to add that I made the strongest personal appeal I could to Col. Talmage to take the 280 tons of rails off your hands, showing him at the same time your message to me, by which it appeared that the Missouri Pacific and Iron Mountain had accepted 63-lb. rails from the same rolls as late as December of last year. He replied that if his inspector made a mistake, then it was no reason why he should make one now, and that he ought not to be called upon to take rails that did not comply with the templet. He said he would be glad to see Mr. Parkes to-morrow morning, and further that he might take rails if some concession were made in consideration of your not complying with the order. I used every possible argument I could think of with him, and hope his interview with Mr. Parkes will result in his taking the rails.

584 If you have not to-day replied to the latter part of my letter of Saturday, may I ask you kindly to do so by return mail, as it is very important I should know what you are willing to do.

Yours truly, E. A. HITCHCOCK,
Provisional Receiver.

CHICAGO, *August* 6, 1884.

E. A. Hitchcock, Esq., prov. receiver St. L. O. & S. Co., St. Louis, Mo.

MY DEAR SIR: Relating to the delivery of rails to your company, I can only say that we are ready and willing to carry out our contract in making the delivery of rails to you for settlement in

prompt cash, upon the terms and conditions stated in our contract. We do not care to deviate from it, and trust you will be able to make such arrangement financially as to enable you to preserve the contracts which you consider of so much value to the St. Louis Ore and Steel Company and thereby relieve them from any embarrassment that may arise for a claim of damages on our part for nonfulfillment of contract by the St. Louis Ore and Steel Company, and for which failure on the part of your company we shall certainly expect them to make good to us. Awaiting your further instructions we are

Very truly yours, O. W. POTTER, *Pres't.*

ST. LOUIS, Mo., *August* 12, 1884.

R. C. Hannah, Esq., sec'y North Chicago Rolling Mill Co., Chicago, Ill.

DEAR SIR: We have delayed answering your favor of July
585 28 until definite action should be taken by the court at Leavenworth, Kansas, regarding the appointment of a permanent receiver for our company. I am pleased to be able to say that on the 7th inst., after hearing all objections from parties in interest, the court confirmed the appointment of Mr. E. A. Hitchcock as permanent receiver. The formal order has been submitted by counsel, and it is expected will be received and enrolled to-day.

Answering as far as possible the questions in your letter of July 28th, we would state:

The receiver of our company does not claim any of the cars of ore covered by the list we sent you, representing shipments from July 5th to July 21st, both dates inclusive; being advised that, since his authority and possession could not take effect earlier than July 22nd, and the cars of ore in that list had all arrived at or beyond East St. Louis on or before the 21st, they are not included in the assets of which he was directed to take charge.

As to any of the ore in the list above referred to being in possession of the Wabash Railway Company or any of their representatives prior to July 5th, I enclose you the original of a letter received from Mr. Batcher, agent of the Missouri Pacific Railway Company, at Carondelet, under date of August 1st, from which it appears that none of the ore referred to has passed out of his possession as agent of the Missouri Pacific Railway Company prior to July 5th. This I believe answers your question on that point. When making returns of weight for pig-iron which was sold you by Messrs. Cherrie & Company for our account but for which you were authorized to settle with Cherrie & Co., until otherwise advised, please remember there was a balance unsettled for with Cherrie & Co. at the date of their suspension July 3d, and that
586 under date of July 4th, we revoke our authority to you to make settlements with Messrs. Cherrie & Co. in respect of that iron. As regards ore shipped to you under your contract with Mr. Cherrie during the month of June, it is very important for us to know the exact quantity of Pilot Knob ore received and the numbers of the cars containing it during the month of June and up to July

3d inclusive, in order that we may be able to make up our own accounts, we shall be very much obliged if you will render to us a statement giving these particulars with the distinct understanding that in rendering such a statement you are not to be considered as making any admission concerning your liability to any one, but simply furnishing us the facts within your knowledge which we ought to have, and as to which we simply call upon you for information. If I can give you any further information on these matters it will give me great pleasure to do so.

Yours truly, O. L. GARRISON,
Agent for Receiver.

Enclosure.

ST. LOUIS, MO., *Aug.* 22*nd*, 1884.

Richard C. Hannah, Esq., secretary, Chicago, Ill.

DEAR SIR: Yours of the 21st enclosing sundry sheets showing weights of all ore received from Pilot Knob from June 1, 1884, to July 3rd, 1884, both dates inclusive, is received, for which I am very much obliged.

We await the remaining pig-iron and ore sheets in order to complete our statement to the court. Am very sorry indeed that
587 we should be the cause of putting additional labor on you just at the present time when you are so busy with other matters.

Yours truly, O. L. GARRISON,
Agent for Receiver.

ST. LOUIS, *Aug.* 12, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago.

DEAR SIR: I beg to acknowledge your favor of the 6th, inst., addressed to me as provisional receiver of the St. Louis Ore and Steel Co., which was received during my absence at Leavenworth at the hearing of Judge Brewer concerning the permanent receivership of said Co.

On the 7th, inst., after hearing all parties in interest who *was* proper to appear, Judge Brewer—U. S. circuit judge—made a further order in the suit of Olyphant against The St. Louis Ore & Steel Co., and others by which I was appointed permanent receiver of said Co., and the instructions given to me as provisional receiver by the order made on July 21st in said case were confirmed.

I beg to enclose herewith for your information a copy of said order of July 21st, and will enclose to you as soon as received a copy of the formal order made under date of the 7th inst. above referred to, which is expected to-day, draft of such order having been forwarded to Judge Brewer by mail on the 9th inst. from this city by the counsel for complainant, and intervening creditors respectively.

You will observe that under the order already made that I am instructed as receiver of the St. Louis Ore and Steel Co. among other things—to carry out and perform the contracts of said last-
588 named company for the purchase and sale of steel rails, and to preserve and protect all the properties of said corporations defendant, etc.

No specific authority or instructions have yet been given to me by the court as to raising or procuring the money which will be payable to parties furnishing the rails under said contract, but I am advised that the power of the court in such cases to authorize a receiver to make arrangements for raising money for expenses and obligations incurred under the direct orders of the court is unquestioned, and it is to be supposed that whatever action of this kind may become necessary will be taken by the court in furtherance of the direction which it has already given. I note that in your letter of 6th inst. you state that your company is ready and willing to carry out its contract in making delivery of rails on the terms therein stated.

I reply that as receiver of the St. Louis Ore and Steel Company, and in pursuance of the order of the circuit court above mentioned, I herewith enclose orders for 1,500 tons of steel rails to be delivered by your company under and in pursuance of said contract during the present month, and I shall instruct my counsel without delay to make application to the circuit court for such further orders as may be expedient or necessary to ensure the fulfillment of the terms of said contract on the part of the St. Louis Ore and Steel Company, which I now represent as receiver thereof, under the orders of said court. As this order is given in pursuance of a request made by the Missouri Pacific Railway Company for rails for August delivery, I will thank you to inform me by wire how soon you will be able to deliver said rails.

Yours truly, E. A. HITCHCOCK, *Receiver.*

Enclosures.

589 CHICAGO, *August* 13, 1884.

E. A. Hitchcock, Esq., receiver St. Louis Ore and Steel Co., St. Louis, Mo.

DEAR SIR: I have your letter of the 12th with enclosures including orders for 1,500 tons of steel for the Missouri Pacific railway, from which I am to understand that you are prepared to make settlements in cash on the tenth day of the month following month of delivery for all steel rails we may deliver, the same being on our contract with the St. Louis Ore and Steel Company. I wish you to be clear and explicit in this that there may be no questions arising after we commence delivery of the rails, and I ask this as you have said to me that the Missouri Pacific were not in shape to pay for their rails until after September, and if that is the case are you prepared to pay if the railroad company does not pay you?

I would also like to have you advise me at what price you would sell 1,000 tons of your Bessemer pig metal of the same character we have been receiving? Settlements for the same to be on the fifteenth day of the month following month of delivery, or the pig metal could apply in part payment for the steel rails, if we can agree upon a price for the pig metal, and such an adjustment could be agreed upon as to settlement. You may think I put this question of settlement a little plainer than would seem prudent or discreet, but as you well understand the price we are getting for the

rails barely lets us out with cost, and we cannot have any complications with anything connected with the balance due on your contract, and I know full well you do not want it, and I ask these questions so plainly simply to know that the court gives you authority to make such arrangements as will insure a prompt carrying out of the contract in all its details.

590 Mr. Parkes will write you relative to the delivery of the rails, and which letter you will probably get with this mail.

Very truly yours, O. W. POTTER, *Pres't.*

ST. LOUIS, *Aug.* 14, '84.

O. W. Potter, Esq., pres. N. C. R. M. Co., Chicago, Ill.

DEAR SIR: I have your favor of the 13th inst., answering mine of the 12th. You ask me to state explicitly whether I am prepared to make settlements in cash on the 10th day of the month following month of delivery of all steel rails you may deliver under contract with the St. Louis Ore & Steel Co.

I do not see that I can give at present any more explicit answer than that contained in my letter to you of the 12th inst., advising you of the orders given to me as receiver by the U. S. circuit court by which I was directed, among other things, "to carry out and perform the contracts of the St. Louis Ore & Steel Co. for the purchase and sale of steel rails and to preserve and protect the property."

As such receiver, I am not now in possession of the money which will be necessary to pay for the rails mentioned in your letter, and I repeat—as advised you on the 12th inst.—that the court has not given me as yet any specific authority to raise money for that purpose, but I am advised the court has power to authorize me to raise money necessary for carrying out any of its orders and that it is to be supposed that the court will take whatever action may be required for that purpose.

591 I cannot of course undertake or agree to act without such orders, nor give you at present any other assurance than that contained in my letter of the 12th inst.

I have obeyed the orders already given me by forwarding to you the orders received from the Missouri Pacific Co. for rails, and it only remains for me to inquire what action under the circumstances thus frankly stated to you, you propose to take. Please inform me by return.

Yours very truly, E. A. HITCHCOCK, *Receiver.*

ST. LOUIS, MO., *Aug.* 15, 1888.

O. W. Potter, Esq., pres. N. C. R. M. Co., Chicago, Ill.

DEAR SIR: Referring to your letter of the 13th, to Mr. Hitchcock and that portion of it regarding the 1,000 tons of pig metal that you would like us to name price on, the iron to be similar to that heretofore shipped your company, I beg to state that subject to the approval of the court, and a satisfactory arrangement to be made with the Mechanics' bank—they having the kind of iron best suited

for your purpose, we can let you have 1,000 tons for immediate shipment at $16.00 per ton for cars — our works and guarantee a rate of freight to your mill at South Chicago at $1.75 per ton. I don't apprehend any trouble whatever in getting an order of court permitting us to sell this iron, and I assume the bank will, of course, be willing to accept your agreement to pay them on the 15th of the month following delivery. This is the only way in which we can at the present time arrange for the shipment of the metal. The bank holds warehouse receipts, and we should have to get them to surrender them in order to get the iron out of the yard.

592 Hoping the very low price we have named you, will be an inducement for you to buy the iron, I am

Very truly yours, O. L. GARRISON,
Ag't for Receiver.

CHICAGO, *August 19th*, 1884.

O. L. Garrison, Esq., ag't for receiver of St. Louis Ore & Steel Co., St. Louis, Mo.

MY DEAR SIR: I am in receipt of yours of the 15th inst., relative to your price for 1,000 tons of pig metal, and would say, that we are not at this writing in the market for the same, but have had some very low figures made to us. And everything else being equal, I think we should be disposed to purchase from your company, and therefore desired your prices, and when we are in the market (but which date however, is very uncertain) we should be glad to confer with you further, and think we should have no difficulty in overcoming any trouble you may apprehend in getting the order of court permitting your sale of the iron.

Very truly yours, O. W. POTTER, *Pres't.*

CHICAGO, *August* 19, 1884.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Yours of the 14th inst. was received during my absence from the city, but in reply to the subject contained in your letter, it seems more like another formal notification that you have been appointed receiver of the St. Louis Ore & Steel Company

593 for the purpose of carrying out its contracts, but up to this time without authority from the court, as receiver to make settlements in cash with us for such contracts as now exist between the St. Louis Ore & Steel Company and this company, and I can only repeat that we are ready to carry out our contract promptly upon being notified by you that you are prepared to carry out yours and at any time you advise us that you are prepared to pay for steel rails in cash as provided in the contracts with the St. Louis Ore & Steel Co. that the rails will be promptly made and delivered to such parties you may direct.

Yours respectfully, O. W. POTTER, *Pres't.*

ST. LOUIS, Mo., *Aug.* 21, 1884.

O. W. Potter, Esq., pres't North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: Your favor of the 19th received. We note that you are not at present ready to contract for pig-iron; when you are we shall be very glad, indeed, to hear from you. We apprehend no trouble whatever in getting permission from the court to sell you the iron; in fact, we expect to have such orders granted not later than Tuesday next as will let us dispose of all our material without special application to the court for each lot. All the iron we have offered you, as I stated, is controlled by one of our banks, and it may be that it will be disposed of in a few days. We have several other lots, however, that we can reach, and thank you very kindly indeed for the assurance you give that, all other things being equal, you would be disposed to give us the preference.

Yours truly, O. L. GARRISON,
Agent for Receiver.

594 KANSAS CITY, Mo., *Aug.* 26, 1884.

O. W. Potter, pres't:

We may want to tender the Missouri Pacific one car-load of fifty-six-pound rails at once; are you rolling this pattern now? Please answer quick, Coates house; am in court to-day.

O. L. GARRISON, *Ag't.*

CHICAGO, *Aug.* 26, 1884.

O. L. Garrison, ag't, Coates house, Kansas City, Mo:

We can deliver immediately car-load Mo. Pac. 56-lb. rails.

O. W. POTTER, *Pres't.*

Send collect.

KANSAS CITY, Mo., *Aug.* 26, 1884.

O. W. Potter, pres't:

Please ship to-day one car-load of fifty-six-pound steel rails, Missouri Pacific standard and their drilling; consign to T. P. Bacher, agent, Carondelet. This telegram refers to your message just received. Answer.

O. L. GARRISON, *Ag't.*

CHICAGO, *Aug.* 26, 1884.

O. L. Garrison, ag't, Coates house, Kansas City, Mo.:

I know of no arrangement for the payment for the rails you name; this is necessary before we ship.

O. W. POTTER, *Pres't.*

Send collect.

595 ST. LOUIS, Mo., *Aug.* 26, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ills.

DEAR SIR: I have been unable to wire you for the past few days regarding further deliveries of rails, because of a necessity that

arose for referring this matter to the court. The necessity was occasioned by indications on the part of the Missouri Pacific R'y Co. not to take the rails unless we resumed shipments of ore, and as I did not wish you to make rails as to the payment of which there would be an uncertainty. A careful and very complete statement of the whole situation as it affected you, ourselves and the Missouri Pacific R'y Co. was laid before the court yesterday at Kansas City, and I am just in receipt of a telegram from my counsel from which I quote as follows: "Judge Brewer announced that he held Missouri Pacific rail contract Nov. 6th, 24,000 tons valid and should be enforced, and that he did not consider the railway Co.'s construction of same correct. He then directed us to prepare supplemental order that receiver proceed to execute orders received from the Missouri Pacific for August deliveries, that receiver be authorized to pay Chicago & Joliet mills for same by issue of receiver's certificate. This was Judge Brewer's own conclusion as Orrick had opposed issue of certificates for rails, and I had expressly disclaimed asking or suggesting authority to issue certificate for rails, leaving the whole question to the court, and unless something is proposed which judge approves the further order, will be signed this afternoon directing you to order Chicago & Joliet to execute orders received for August and promising payment for same."

You will see from the above that the court has decided that the Missouri Pacific R'y Co. must take the rails under the con-
596 tract referred to, and that although Mr. Orrick, the counsel for those who oppose my receivership, was opposed to the issuance of receiver's certificates for the rails, nevertheless the judge decided as above stated that the contract must be carried out and be paid for if necessary by receiver's certificates. Our contract with the Missouri Pacific of Nov. 6th referred to in the above telegram has a clause in it which the railway Co. desire to construe as releasing them from taking any rails under that contract unless ore shipments continue, but you will see that the judge has decided that that construction was not the correct one to be placed upon the clause.

My counsel returns to-night from Kansas City, and will be here to-morrow morning, when I shall have the full text of the order, and the object of the present is to ask you whether or not you will be willing now to go ahead and execute the orders in your hands, to be paid for, if necessary, by order of the court, with receiver's certificates, behind which you will, of course, have the whole of the property of the company. I write this letter to put the situation before you as fully as it is before me at this writing, thus hoping to save time, and in order that you may understand such further communications by telegraph as I may make to you to-morrow, when I have the full text of the order before me, for you will understand that whatever you do must be done in time to get the delivery complete here before the first prox, otherwise there might be a cause for the railway Co. refusing to receive the rails.

Yours, truly, E. A. HITCHCOCK, *Receiver.*

597 ST. LOUIS, MO., *Aug. 27th*, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ills.

DEAR SIR: Referring to my letter of yesterday, I did not telegraph you with reference to the expected order from the judge, because, upon further reflection, I presume you would prefer to see the order in full, and I now beg to inclose certified copy of the same.

You will note by this that the receiver is authorized to issue certificates and borrow money on same to the extent of $75,000.00, for payment of the rails therein referred to, part of which are to be made at your mill. Too short a time has elapsed for me to negotiate these certificates in the market, but I am left the alternative of paying for the rails with these certificates, should you be willing to accept same. Please, therefore, inform me by wire, as soon as possible after receipt of this, whether or not you would receive such certificates in payment of the rails we have ordered from you, and upon receipt of your message, as above requested, I will wire you further instructions with reference to the orders now in your hands.

Yours, truly, E. A. HITCHCOCK, *Receiver*.

CHICAGO, *August* 28, 1884.

E. A. Hitchcock, receiver, St. Louis, Mo.:

Letter received; if Mo. Pac. are made to receive and pay you for rails we deliver, why should we take receiver's certificate? If you have to issue certificates, it should be to raise money to pay us for the rails; our contract with your company is not to be paid
598 in receiver's certificates, but cash, and we are ready and always have been to carry out our part of it.

O. W. POTTER, *Pres't*.

71 collect.

ST. LOUIS, MO., *Aug.* 29, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: I received your telegram yesterday afternoon, informing me that Mr. Parkes would call on me to-morrow, that is, to-day, and have had the pleasure of seeing and fully explaining to him the situation as it at present stands with reference to our rail contracts.

I now beg to advise that I have further instructions from his honor, Judge Brewer, directing me to "press the contract with Chicago and Joliet mills and tender the rails as soon as possible," and complying with these instructions, I now beg to request that you will execute the orders you have in hand from me, payment for which will be in conformity with the orders of the court, dated the 26th inst., certified copies of which I enclose with my letter to you of the 27th inst. Please inform me when these rails will be ready for inspection and delivery.

Yours truly, E. A. HITCHCOCK, *Receiver*.

ST. LOUIS, MO., *Sept.* 1*st*, 1884.

R. C. Hannah, Esq., sec'y N. C. R. M. Co., Chicago, Ill.

DEAR SIR: Your favor of the 29th ult. enclosing two lists of car numbers of Pilot Knob ore received by your company is at hand for which we are very much obliged indeed. In accordance
599 with your telegraphic advice of the 30th, we deduct car 23569 from our ore sheets. I hope to receive by to-morrow's mail the promised sheet covering pig-iron weights.

Enclosed please find car numbers for 171 cars of ore shipped you under an arrangement whereby you were to pay the through freight from Pilot Knob to your mill. Will you kindly have the gross tare and net filled in opposite these car numbers so far as the cars have arrived at your mill, and return same to us to be used in making invoice for the month of August, and greatly oblige.

Yours truly, O. L. GARRISON,
Agent for Receiver.

SEPTEMBER 1ST, 1884.

E. A. Hitchcock, receiver St. Louis Ore & Steel Co., St. Louis, Mo.:

This company is ready to make the delivery of rails on its contract with your company and would ask you to negotiate the receiver's certificates as provided by order of court and pay them in cash for the rails as provided in the contract of the Saint Louis Ore & Steel Company with this company and when so advised that payment will be made as originally provided, deliveries will be made promptly.

O. W. POTTER, *Pres't.*

71 paid.

ST. LOUIS, MO., *Sept.* 1*st*, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: I am in receipt of your dispatch reading as follows: "This company is ready to make the delivery of rails in its
600 contract with your company and would ask you to negotiate the receiver's certificates as provided by order of court and pay them in cash for the rails as provided in the contract of the St. Louis Ore & Steel Company with this company, and when so advised that payments will be made as originally provided, deliveries will be made promptly," and would now ask you to kindly inform me whether you desire me to understand by the above telegram that you decline to receive certificate issued by me as receiver in payment for the rails, orders for which you now have in hand from me.

Yours truly, E. A. HITCHCOCK, *Receiver.*

CHICAGO, *Sept.* 2, '84.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: Your favor of Sept. 1st to Mr. Potter, quoting his message sent you in relation to receiver's certificates, in payment for

rails, received, and I am instructed by Mr. Potter to say that our company declines to receive receiver's certificates in payment for the rails, for which we now have orders in our hands from you, as this payment is not in accordance with our contract with your company.

Resp'y yours, JOHN C. PARKES,
Gen. Manager.

601 ST. LOUIS, Mo., *Sept. 2d*, 1884.

R. C. Hannah, Esq., sec. N. C. R. M. Co., Chicago, Ill.

DEAR SIR: Our record shows cars of pig-iron shipped you as per enclosed memo., will you kindly see if they have been received.

With this return I believe the pig-metal matter will be straightened out.

Yours truly, O. L. GARRISON,
Agent for Receiver.

ST. LOUIS, Mo., *Sept. 3d*, 1884.

O. W. Potter, Esq., pres't North Chicago R. M. Co., Chicago, Ill.

DEAR SIR: I am in receipt of Mr. Parkes' letter of yesterday's date, and regret to note by its contents that you decline to receive receiver's certificate in payment for the rails, for which you have orders from me, as I can offer you no other mode of payment at present.

Yours truly, E. A. HITCHCOCK, *Receiver.*

ST. LOUIS, Mo., *Sept. 6th*, 1884.

R. C. Hannah, Esq., sec'y, Chicago, Ill.

DEAR SIR: With the sheet sent us in your favor of the 5th, we are now enabled to straighten out all the ore and pig-iron matters with the exception of one car. N. Y., C. & St. L., 12,895, reported to you as ore on your sheet of May 29th, for $253\frac{710}{2240}$ tons. This car we have all along claimed to be pig-iron, for our record
602 shows it to be such, and several letters have passed between our respective selves regarding the same. We now beg to enclose you the tracer, showing this to be really pig-iron. On hearing from you that you are satisfied of this fact we will charge the pig-iron to your account. Please return the tracer.

Yours truly, O. L. GARRISON,
Agent for Receiver.

Enclosure.

ST. LOUIS, Mo., *Sept. 17th*, 1884.

R. C. Hannah, Esq., sec'y N. C. R. M. Co., Chicago, Ill.

DEAR SIR: We have completed checking the report you handed me in person in your office, and with the 6 cars of ore that remain unaccounted for, and for which we have sent you statement to know if they were received by you, if not then to be traced by our company, and the following differences, everything agrees with our record: The differences I refer to are—sheet No. 5.

Pig-iron not paid for: The total amount of charges on this statement, $1,483.11; we deduct from this the freight on cars 9646, weight 30,900 lbs., freight, $20.45 and credit you with $1,462.66, and you should deduct the $20.45 as in settlement with Cherrie & Co.'s assignee, having made settlement as pig-iron when car contained ore. Sheet No. 6.

Pig-iron paid for: The first car on the list, No. 22257, weight, 40,930 lbs., freight was paid by Cherrie & Co. on June 19th, '74, amount being $27.08, and we hold the expense bill for this car. This amount we deduct from statement No. 6, leaving $3,276.51. We also add to your car No. 22250, weight 39,860 lbs., freight,
603 $26.36—car 19899, weight, 29920, freight, $19.79—making total freight paid $3,322.66, which should be deducted by you in settlement with Cherrie & Co., for you have paid them for the pig-iron that this freight represents, and there should be no question about your right to charge the assignee with these amounts.

Yours truly, O. L. GARRISON,
Agent for Receiver.

ST. LOUIS, Mo., 9, 18, 1884.

R. C. Hannah, sec'y N. C. R. M. Co.:

Referring to your letter yesterday car 19899, does appear on your list No. 6; please cut it out of our report.

O. L. GARRISON.

CHICAGO, *Sept. 19th*, 1884.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co., St. Louis, Mo.

MY DEAR SIR: We would like to remind you that we have received no shipping instructions for September, for the delivery of steel rails on our contract with your comprny dated Dec. 1st, 1883, and on which contract there is still some 10,000 tons not delivered.

We also desire to say to you that we are prepared to carry out our part of this contract, and for any failure on the part of your company to carry out its part we shall expect to hold them in damages for whatever amount we may make such damages appear.

It is, of course, our preference to deliver the rails, which we are ready to do.

604 Trusting that I may hear from you at an early day on this subject, I am

Very truly yours, O. W. POTTER, *Pres't.*

ST. LOUIS, Mo., *Sept.* 22, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: In reply to your letter of July 19th, I can only confirm previous advices with respect to the delivery of and payment for rails concerning which you make inquiries. By order of the court I can only pay for said rails with the proceeds of receiver's certificates or the certificates themselves, and as I have not yet been able to dispose *and* any I can therefore only at present promise to

pay you in such certificates for any rails you may be willing to forward to me.

Yours truly, E. A. HITCHCOCK, *Receiver.*

CHICAGO, *Sept.* 23, 1884.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co., St. Louis, Mo.

MY DEAR SIR: I am in receipt of yours of the 22d inst., and will you please advise me—if you do not consider it an impertinent question—as to the efforts you have made to negotiate your receiver's certificates in order to provide yourself with money to carry out the contracts you have with this company for steel rails as
605 provided by order of court a copy of which you have furnished me, and by so doing oblige,

Very truly yours, O. W. POTTER, *Pres't.*

ST. LOUIS, MO., *Sept.* 24, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ill.

DEAR SIR: I am in receipt of your letter of yesterday's date, but cannot answer the question therein asked until I know for what purpose your inquiry is made.

If you will kindly inform me upon this point, and I can then see no objection to answering the question, I will do so with much pleasure.

Yours truly, E. A. HITCHCOCK, *Receiver.*

CHICAGO, *Sept.* 25, 1884.

E. A. Hitchcock, Esq., receiver St. Louis Ore & Steel Co., St. Louis, Mo.

MY DEAR SIR: I am in receipt of your favor of the 24th inst., and in reply would say, my reason for asking you the question I did, was to learn from you whether you were really making any effort to carry out your contract with our company other than to force us to take receiver's certificates from you, or suffer the inconvenience and loss that you well know our company must suffer by the position the failure of your company has put us in.

I was opposed from the first of making the contract we made with your company, without having the Missouri Pacific
606 railway a party to the contract, and which stipulation was made a part of our contract when it was forwarded to you.

It was returned by your people in such a manner as would indicate that you considered it almost an insult to ask that these people be made parties with you to the contract, as it seemed to question the standing of your company.

Entirely out of personal consideration for you, I did not push the matter further, but had it been any person other than you I should never have made the contract, but we allowed other work from entirely responsible parties go, and which work we would have been making to-day had we not taken yours, and would be getting our pay for—as it is we have the material practically in our yard for

doing this three hundred and fifty thousand dollars' worth of business, and feeling that you were not doing all in your power to carry out your contract with this company, prompted my asking the question of you that I did in my letter of the 23d, and whether you consider it proper or improper to answer the question there asked of you, I leave entirely to your judgment, and remain

Very truly yours, O. W. POTTER, *President.*

ST. LOUIS, *Sept.* 26, '84.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ills.

DEAR SIR: I am in receipt of your favor of yesterday's date, and fully appreciate the frankness of its contents.

As the best means of disabusing your mind of any erroneous impressions you may entertain, I send you herewith a
607 copy of the petition to the court filed by me Aug. 25th which I think will give you a clear understanding of the efforts made by me to carry out in good faith our rail contract with your good self and other parties as well as of the obstacles I encountered in my efforts to do so.

Beginning with the last paragraph page nine, you will note a reference to an effort made by me to compromise these rail contracts with the Missouri Pacific R'y Co. on terms which would have resulted advantageously to all parties yourself included, but which overtures I regret to say were rejected by Capt. Hayes. In view of this state of facts it would have been wrong in me to have asked you to forward rails without immediate or prospective means of paying for the same, and hence my application to the court for power to issue receiver's certificate, which was granted as you will have seen by copy of the order of court sent you dated Aug. 26th. And now in reply to your inquiry of the 23d inst. it is right and proper, with the explanation made in yours of the 25th, that I should say to you that I have made every possible endeavor to dispose of these certificates both here and in New York, but without success; and, under the orders of the court, I was left no alternative but to ask you to accept the same.

Yours very truly, E. A. HITCHCOCK, *Receiver.*

CHICAGO, *Sept.* 27, 1884.

E. A. Hitchcock, Esq., receiver, St. Louis Ore & Steel Co., St. Louis, Mo.

DEAR SIR: I am in receipt of yours of the 26th inst. with enclosures as stated and desire to thank you for the same.

Very truly yours, O. W. POTTER, *Pres't.*

608 CHICAGO, *Oct.* 9, '84.

E. A. Hitchcock, receiver St. Louis Ore & Steel Co., St. Louis, Mo.:

If the price for balance of rails due on your contract for the Missouri Pacific was reduced to thirty dollars here, would they take the rails and make prompt settlement in cash. Answer.

O. W. POTTER, *Pres't.*

Pay.

CHICAGO, *Oct.* 10, '84.

E. A. Hitchcock, receiver St. Louis Ore & Steel Co., St. Louis, Mo.

Have you any answer to make to Mr. Potter's message to you of yesterday's date?

JOHN G. PARKES,
Gen. Manager.

ST. LOUIS, MO., *Oct.* 10, 1884.

O. W. Potter, Esq., pres't N. C. R. M. Co., Chicago, Ills.

DEAR SIR: Yesterday was a general holiday here and I was out of the city, so that your dispatch of that date was delivered to me only this morning, since when, I have a dispatch from Mr. Parkes requesting an answer thereto. This will explain the delay in replying by wire, which I have just done to the effect that I would write you by to-night mail.

By referring to my letter to you of the 26th ult., you will notice I allude to a compromise I had proposed to Capt. Hayes, and which compromise was declined by him chiefly on the ground of its being a hypothetical case; that is Capt. Hayes was unwilling to give a definite answer until I could make him a definite proposition, and for this reason until I know definitely what you will be will-
609 ing to do, it would be useless for me to again see Capt. Hayes.

While in addition to this, you will understand of course that any arrangement he might be willing to make with you and me with respect to these rail contracts would necessarily be subject to the approval of the court. I am afraid it is too late to make any compromise with him, but if you will make me a definite proposition will see what can be done.

Yours very truly, E. A. HITCHCOCK, *Receiver.*

ST. LOUIS, MO., *Oct.* 31, 1884.

R. C. Hannah, Esq., secretary N. C. R. M. Co., Chicago, Ill.

DEAR SIR: We enclose you statement of our account with your company as asked for, showing balance due us of $14,098.07. This statement is rendered subject to the approval of the United States circuit court for the eastern district of Missouri. We are obliged to make this condition for the reason that an opposing creditor claims we have no right to allow offsets. His position our attorney does not think well taken, however, and the receiver is now contesting his claim. I would also say for your information that the master in chancery has overruled the objection, and there is no question but what the court will sustain the master, but it is deemed best we should make the condition above referred to until the account has been finally passed on by the court, the receiver feeling that it is necessary for his own protection to take that ground.

Yours truly, O. L. GARRISON,
Agent for Receiver.

Enclosure.

610 P. S.—We have given you freight credit at $1.50 per ton on the exact tonnage you report. If the amount actually paid differs please advise, and oblige.

O. L. G.

(Endorsed:) Filed Nov. 26, 1888. Wm. H. Bradley, clerk.

611 Afterward, to wit, on the fourth day of December, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the St. Louis Ore and Steel Company, Ethan A. Hitchcock, receiver of said company, and David K. Ferguson, by their solicitors, and the North Chicago Rolling Mill Company, by its solicitor, also comes, and on motion of the solicitors of said St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver, leave is given to said parties to amend their answer heretofore filed to the petition of the North Chicago Rolling Mill Company, said amendments being now filed herein; and on motion of said solicitors leave is given to said David K. Ferguson to amend his supplemental bill heretofore filed herein, as by the amendment thereto this day filed; and on motion of the solicitors of said North Chicago Rolling Mill Company leave is given to said company to amend its petition heretofore filed herein, and on like motion this cause is hereby referred back to Henry W. Bishop, master in chancery, to take further proofs therein.

612 On the same day, to wit, on the fourth day of December, 1888, came David K. Ferguson, by his solicitors, and filed in said clerk's office an amendment to his supplemental bill in said entitled cause; which said amendment is in the words and figures following, to wit:

613 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court Thereof. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE & STEEL COMPANY. } Bill for Appointment of Receiver.

Now comes David K. Ferguson, by his solicitors, and amends his supplemental bill heretofore filed herein by striking out the last paragraph on the third page thereof and inserting in its place the following:

Your orator further shows unto your honors that on or about the 7th day of January, 1886, a judgment was rendered in said suit No. 19235 against said St. Louis Ore & Steel Company for $8,466.84, and that on or about the fifth day of February, 1886, a judgment was rendered in said suit No. 19236 against said St. Louis Ore & Steel Company for $10,051.78, and that on the 13th day of January, 1886, a judgment was rendered by this court in said suit No. 19235 against said North Chicago Rolling Mill Company, as garnishee, for the sum of $16,473.28.

Also, by adding to the first paragraph on the fourth page, after the word "same," the following: Together with the amount of said judgment against said garnishee.

HUTCHINSON & LUFF,
Sol'rs for Ferguson.

Endorsed: Filed Dec. 4th, 1888. Wm. H. Bradley, clerk.

614 On the same day, to wit, on the fourth day of December, 1888, came the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver, by their solicitors, and filed in said clerk's office their amendments to their answer in said entitled cause; which said amendments are in the words and figures following, to wit:

Amendments to Answer of St. Louis Ore and Steel Co. et al. to Petition of North Chicago Rolling Mill Company.

Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery. Bill.

Now comes the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver of said company, by their solicitors, and amend their answer heretofore filed to the petition of the North Chicago Rolling Mill Company by striking out of the second paragraph on the fifth page of said answer the words "and that it is the intention of said plaintiff to proceed to judgment against said petitioner" and adding to said paragraph, after the word "alleged," the following: And these respondents say that afterwards, on the 13th day of January, 1886, a judgment was rendered by this court in said suit No. 19235 against said petitioner, as garnishee, for the sum of sixteen thousand four hundred and seventy-three dollars and twenty-eight cents, and on the 5th day of February, 1886, a judgment was rendered by this court in said suit No. 19236 against said St. Louis Ore and Steel Company for the sum of ten thousand and fifty-one dollars and seventy-eight cents, with costs of suit.

615 These respondents, further answering, deny that this respondent, The St. Louis Ore and Steel Company, was at the

time of filing said petition or is now insolvent, and that said damages will be lost to said petitioner as is in the said petition alleged.

HUTCHINSON & LUFF,
Sol'rs for Resp'd'ts.

(Endorsed:) Filed Dec'r 4, 1888. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-third day of January, 1889, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office an amendment to its petition in said entitled cause; which said amendment is in the words and figures following, to wit:

616 *Amendments to Intervening Petition of the North Chicago Rolling Mill Co.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court Thereof. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } Bill to Foreclose Mortgage.

Now comes the North Chicago Rolling Mill Company, by its solicitor, and pursuant to leave of court amends its said petition as follows, to wit:

(1.) By striking out the following words, appearing on page 5 of said petition and on page 7 of said printed record, viz: "And the said sum still remains unsettled with your petitioner."

(2.) By striking out the following paragraph on page 17 of said petition and pages 16 and 17 printed record, viz: "Your petitioner further shows unto your honor that on the 7th day of the present month (January, 1886) a judgment was entered in the aforesaid suit No. 19235 for the sum of $8,466.64, and that a verdict in said suit No. 19236 has been rendered in favor of the plaintiff for the sum of $10,051.78; and your petitioner is informed and believes
617 that it is the intention of the said Joliet Steel Company and the said St. Louis Ore and Steel Company to proceed to judgment against your petitioner as garnishee in said two causes pursuant to the ruling of the court therein as aforesaid, and thereby to deprive your petitioner of all benefit of recoupment and set-off of the damages aforesaid."

And by inserting the following paragraph in its stead, viz:

"Your petitioner further shows unto your honor that on the 7th day of the present month (January, 1886) a judgment was rendered in favor of said Joliet Steel Company and against said St. Louis Ore and Steel Company for the sum of $8,466.64, in the aforesaid suit No. 19235, and that on the — day of the said present month a judgment was rendered in favor of said Joliet Steel Company and against said St. Louis Ore and Steel Company for the sum of

$10,051.78, in the aforesaid suit No. 19236, and that on the 13th day of the said present mo-th there was allowed to your petitioner a set-off of all its said claims, as shown in its said answer filed therein, excepting its said claims for danages; which said last-mentioned claims were not allowed for the reasons aforesaid; and thereupon, in said last-mentioned suit, on the day last aforesaid, a judgment was entered against your petitioner, as garnishee, for the sum of $16,473.28, and in favor of the said St. Louis Ore and Steel Company, for the use of said Joliet Steel Company and all others entitled to share therein, but that to enable your petitioner to apply for a set-off and relief in equity in respect to said claims for damages under said rail contract execution upon the aforesaid judgment against your petitioner was stayed until the further order of the court therein; and your petitioner is informed and believes that it is the intention of the said Joliet Steel Company and of the said St. Louis Ore and Steel Company to proceed to enforce and collect said judgment
618 so as aforesaid entered against your petitioner, and thereby deprive your petitioner of all benefit of recoupment and set-off of the damages aforesaid."

GEO. WILLARD,
Sol'r for Petitioner.

(Endorsed:) Filed Jan'y 23, 1889. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of February, 1889, came the North Chicago Rolling Mill Company, by its solicitors, and filed in said clerk's office its replication to the amended answer of David K. Ferguson and the joint answer of the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver in said entitled cause; which said replication is in the words and figures following, to wit:

619 *Replication.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the United States Circuit Court.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL CO. *et al.* } In Chancery.

The replication of The North Chicago Rolling Mill Company, intervenor, to the amended answer of David K. Ferguson and the joint answer of the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver of said company.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto says that it will aver, maintain, and prove its intervening petition to be

true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants *are* uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other mat-er or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said petition — hath already prayed.

GEO. WILLARD,
Solicitors for Petitioner.

Endorsed: Filed this 25th day of February, A. D. 1889. Wm. H. Bradley, clerk.

620 Afterward, to wit, on the fourteenth day of March, 1889, came the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver, by their solicitors, and filed in said clerk's office their answer to the amended petition of the North Chicago Rolling Mill Company in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of the St. Louis Ore and Steel Company to Amended Petition of the North Chicago Rolling Mill Company.

Circuit Court of the United States for the Northern District of Illinois. In Chancery.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } Bill.

The joint answer of the St. Louis Ore and Steel Company and Ethan A. Hitchcock, receiver of said company, to the amended petition of the North Chicago Rolling Mill Company filed in said cause.

These respondents, saving to themselves all benefit and advantage of exception which can or may be had or taken to the many errors and imperfections in the said petition contained, for answer thereto or to so much and such parts thereof as these respondents are advised is or are material for them to answer, answering, say they admit that on or about the first day of December, 1883, said
621 petitioner entered into a contract with said St. Louis Ore and Steel Company substantially as in said petition alleged.

These respondents, further answering, admit that said petitioner and said St. Louis Ore and Steel Company entered upon the performance of said contract, and that said contract was in part performed, but these respondents deny that said St. Louis Ore and Steel Company failed to pay said petitioner said sum of $21,536.56

on said 10th day of July, 1884, as in the said petition alleged, and say that said payment was waived by said petitioner.

These respondents, further answering, admit that said receiver undertook to substantially comply with the terms of said contract, but they deny that he failed to carry out or perform the same on the part of said St. Louis Ore and Steel Company, as in the said petition alleged, and aver that he has ever since his appointment been ready and willing and has offered to carry out substantially the terms of said contract as receiver as aforesaid under the order of court appointing him, but said petitioner has failed and refused to perform the said contract on its part.

That said petitioner refused to deliver said rails under said contract unless this respondent, Ethan A. Hitchcock, as receiver, would give his personal obligation to pay for said rails in cash on delivery. These respondents believe that on the first day of January, 1885, a balance of rails remained undelivered on said contract, but the amount thereof they are unable to state.

These respondents, further answering, admit that in order to carry out its contracts it was necessary for said petitioner to purchase iron ore and pig metal; but these respondents deny that upon consideration that said St. Louis Ore and Steel Company had entered
622 into the contract aforesaid said petitioner purchased of and said St. Louis Ore and Steel Company, upon consideration of such contract, sold to said petitioner from about the first day of December, 1883, until the 10th day of July, 1884, large quantities of pig metal, as is in the said petition alleged; and these respondents aver that the said contract and said purchases of pig metal were separate and distinct transactions. These respondents, further answering, admit that said petitioner during the month of July, 1884, came into possession from said St. Louis Ore and Steel Company of certain parcels of pig metal, as in the said petition alleged.

These respondents, further answering, deny that in consideration of the aforesaid contract for the manufacture of rails said petitioner purchased of and said St. Louis Ore and Steel Company sold to one R. M. Cherrie a large quantity of iron ore, as is in the said petition alleged; and these respondents aver that the said contract for rails and said sale to said Cherrie were entirely separate and distinct transactions.

These respondents, further answering, admit that said Cherrie entered upon the performance of his contract with said petitioner and continued such performance until the 3d day of July, 1884, when he made an assignment for the benefit of his creditors and ceased delivering ore on said contract, as is in the said petition alleged. They deny that said petitioner agreed verbally with said St. Louis Ore and Steel Company to receive from it and said company agreed to deliver to said petitioner iron ore upon the same terms and conditions as contained in the said contract with said Cherrie, but say that said St. Louis Ore and Steel Company sold and delivered to said petitioner certain quantities of iron
623 ore at about the same price as that contracted for with said Cherrie.

These respondents have no knowledge or information as to the payment of said transportation charges, and therefore can neither admit nor deny the said allegation, but require proof thereof.

These respondents, further answering, admit that certain ore delivered by said St. Louis Ore and Steel Company to said petitioner did not possess the amount of metallic iron required, and that said petitioner had a just claim for said shortage, amounting to $458.66, and that said claim has been allowed to said petitioner in said suits at law, as is in the said petition alleged.

These respondents, further answering, deny that said St. Louis Ore and Steel Company made any default in the performance of said contract for steel rails on its part, and they also deny that said petitioner sustained any damage by reason of said alleged non-performance.

These respondents, further answering, admit that the Joliet Steel Company instituted two suits at law in the superior court of Cook county against said St. Louis Ore and Steel Company; that said petitioner was summoned therein as garnishee, and that said suits were removed into this court, as in the said petition alleged.

But these respondents deny that said petitioner in said suits set forth in substance the dealings between said petitioner and said St. Louis Ore and Steel Company in respect to said rails, ore, and pig metal, and that it claimed in said two causes that the account correctly stated between said petitioner and said company was as set forth in said petition.

These respondents, further answering, deny that upon the trial of the issues between said petitioners and the plaintiff in said
624 causes said petitioner introduced proof fully sustaining the account aforesaid, and aver that said proof did not sustain said claim or any part thereof, and they deny that it was ruled in said causes that said item of unliquidated damages could not be set off therein for the reasons stated in said petition; but they admit that it was ruled in said causes that said account could not be set off therein.

These respondents, further answering, deny that said St. Louis Ore and Steel Company made default in the performance of said rail contract in respect to the payment of moneys thereunder before the time of the service of said writs of garnishment, and that in consequence of such default damages occurred to said petitioner before the service of said writ.

And they deny that subsequent to the service of said writs of garnishment the said St. Louis Ore and Steel Company made default in the performance of said rail contract, and that such defaults have continued from thence hitherto, as in the said petition alleged.

These respondents, further answering, admit that at the time of the service of said writs of garnishment said petitioner was indebted to said St. Louis Ore and Steel Company, but they deny that before the 15th day of August, 1884, a default on the part of said company had taken place which caused damage to said petitioner, and that

such default and damage were increased by said company, as is in the said petition alleged.

These respondents, further answering, admit that judgments were entered in said suits in this court substantially as in said petition alleged. They admit that on the 13th day of said month of January, 1886, there was allowed to the said petitioner all of its said claims, as shown in its said answer, excepting the said claims for damages; but these respondents deny the allegation that said
625 claims were not allowed for the reasons stated in said amended petition.

These respondents admit that it is the intention of said Joliet Steel Company, said St. Louis Ore and Steel Company, or David K. Ferguson, the assignee of said judgments in favor of said Joliet Steel Company, to proceed to enforce and collect said judgment against said petitioner, as in the said petition alleged.

These respondents, further answering, deny that this respondent, The St. Louis Ore and Steel Company, was at the time of filing said petition or is now insolvent, and that said damages will be lost to said petitioner, as is in the said petition alleged.

These respondents, further answering, say that this respondent, Ethan A. Hitchcock, was on the 21st day of July, 1884, by the circuit court of the United States for the eastern district of Missouri and on the 9th day of September, 1884, by this court appointed receiver of all the property, rights, credits, and effects of the said St. Louis Ore and Steel Company, and that he is now such receiver.

These respondents, further answering, say that in said suit of the Iron Mountain Company against said St. Louis Ore and Steel Company judgment was entered against said defendant on the first day of February, 1886, for the sum of $21,562.63 and costs, and that proceedings therein against said petitioner were stayed.

These respondents are informed and believe that, so far as said petitioner is concerned, said Iron Mountain Company's cause involves the same subject-matter and issues which are involved and raised in said suits of the Joliet Steel Company aforesaid, as is in the said petition alleged.

626 These respondents deny that said petitioner has any just claim for damages or anything else against these respondents or either of them or any right to set off or recoup any claim whatever against them or either of them at law or in equity.

And these respondents pray to be hence dismissed with their costs.

ST. LOUIS ORE AND STEEL COMPANY,
ETHAN A. HITCHCOCK, *Receiver*,
By HUTCHINSON & LUFF, *Their Sol'rs.*

HUTCHINSON & LUFF,
Sol'rs for Respondents.

(Endorsed:) Filed M'ch 14, 1889. Wm. H. Bradley, clerk.

627 Afterward, to wit, on the twenty-eighth day of March, 1889, came Henry W. Bishop, one of the masters in chancery of

said court, and filed in said clerk's office his report in said entitled cause; which said report together with the testimony thereto attached are in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

ROBERT M. OLYPHANT
vs.
THE ST. LOUIS ORE & STEEL COMPANY *et al.* } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mill Company.

Master's Report.

To the honorable the judges of said court:

I, Henry W. Bishop, master in chancery of said court, to whom by an order entered herein the above-entitled cause was referred for the purposes in said order expressed, hereby report that having given notice to the various parties interested that a hearing in said cause would be had before me on the twenty-third (23rd) day of January, A. D. 1889, at my office, in the Honore building, Chicago, I was at said time and place and subsequently, on the fifteenth (15th) day of February, A. D. 1889, attended by Mr. George Willard, solicitor for said intervening petitioner, and by Mr. Otis K. Hutchinson,
628 solicitor for said defendant company, and that said counsel did then and there offer certain documents in evidence before me, and they are herewith attached and made a part of this report, all of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, March 27, A. D. 1889.

MARCH 27TH, 1889.

Hon. H. W. Bishop, master, &c.

DEAR SIR: In Olyphant *v.* St. Louis Ore and Steel Co. both parties have put in all their evidence, and you may report same in time for hearing of the cause by Judge Gresham to-morrow a. m.

GEO. WILLARD,
Sol'r for N. C. R. M. Co.
HUTCHINSON & LUFF,
Solicitors for St. Louis Ore and Steel Co. et al.

629 In the Circuit Court of the United States for the Northern District of Illinois.

OLYPHANT, Complainant,
vs.
ST. LOUIS ORE AND STEEL COMPANY, Defendants. } In Chancery.

In the matter of the intervening petition of the North Chicago Rolling Mills Co.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 23rd day of Jan'y, A. D. 1889.

Present: Mr. Hutchinson, for defendant; Mr. Willard, for the intervenor.

Mr. WILLARD: I offer in evidence certified copy of master's report, filed October 12th, 1886, on hearing under order of March 24th, 1886, in this cause, pending in the United States circuit court for the eastern division of the eastern judicial district of Missouri.

Also a certified transcript of certain proceedings in said cause in the court last aforesaid.

Also a certified copy of petition of the St. Louis Ore and Steel Company for order authorizing statement of liability filed in the court last aforesaid.

Also a certified copy of order of March 29th, 1887, in the cause last aforesaid.

Also certified copy of report of the receiver, filed March 28th, 1887, in the cause last aforesaid.

I believe that is all the testimony I wish to introduce on this reference to the master. I, however, desire to reserve the right to introduce any further proof that I may have inadvertently overlooked.

630 Solicitor for defendant, The St. Louis Ore and Steel Co., objects to the introduction of above documents on the ground that they are incompetent and irrelevant.

In the Circuit Court of the United States for the Northern District of Illinois.

R. M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } In Chancery.

In re pet. North Chicago Rolling Mill Company.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 15th day of February, A. D. 1889.

Present: Mr. Willard, on behalf of N. C. R. M. Co.; Mr. Hutchinson, on behalf of St. L. O. & S. Co.

Mr. HUTCHINSON: I offer in evidence certified copy of a portion of the records in the case of R. M. Oliphant *et al. vs.* The St. Louis

Ore and Steel Company *et al.*, formerly pending in the United States court of America in the eastern division of the eastern judicial district of Missouri.

Also another copy of a portion of said records in said case.

Mr. WILLARD: I wish to enter a general objection to the introduction as immaterial.

631 & 632 The papers above offered in evidence were marked "Offered inevidence by Mr. Hutchinson, February 15th, 1889."

Mr. HUTCHINSON: As far as I am advised this is all the testimony I have.

Adjourned.

633 Order entered February 3, 1886, as follows, in the second case of Joliet Steel Company *v.* St. Louis Ore and Steel Company, the North Chicago Rolling Mill Company, garnishee; being case Gen. No. 19236, term No. 457:

WEDNESDAY, *February* 3, 1886.

THE JOLIET STEEL COMPANY
v.
THE ST. LOUIS ORE AND STEEL COMPANY, The North Chicago Rolling Mill Company, Garnishee.

Now comes the plaintiff by W. G. Beale, Esq., its attorney, and said garnishee by Geo. Willard, Esq., its attorney, and on motion of the plaintiff by its attorney: It is ordered by the court that the garnishee proceedings herein against the North Chicago Rolling Mill Company be dismissed at the costs of the plaintiff, and that execution issue therefor.

Garnishee Summons and Return of Sheriff.

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois, to the sheriff of Cook county, Greeting:

Whereas, William R. Stirling hath complained that the
634 St. Louis Ore and Steel Company is justly indebted to the Joliet Steel Company to the amount of ten thousand and fifty-one dollars and seventy-eight cents, and that the said St. Louis Ore and Steel Company is not a resident of this State.

And the said plaintiff having given bond and security according to law:

We therefore command you, that you attach so much of the estate, real or personal, of the said St. Louis Ore and Steel Company to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate, so attached in your hands, to secure, or so to provide that the

same may be liable to further proceedings thereupon, according to law, and that you summon the St. Louis Ore and Steel Company to appear and answer the complaint of the said Joliet Steel Company, at a term of said superior court of Cook county, to be holden at Chicago, in the county of Cook, upon the fourth day of August, next, and that you also summon the North Chicago Rolling Mill Company, the Merchants' Loan and Trust Company and Robert E. Jenkins, assignee of estate of R. M. Cherrie and such other persons as you shall be required by the said plaintiff, as garnishees, to be and appear at the said court on the said fourth day of August next, then and there to answer to what may be objected against them, when and where you shall make known to the said court how you have executed this writ. And have you then and there this writ.

Witness, John J. Healy, clerk of the said court, and the seal thereof, at Chicago, in said county, this 21st day of July, A. D. 1884.

[SEAL.] JOHN J. HEALY, *Clerk.*

Return by sheriff shows service July 21, 1884.

635 *Interrogations to Garnishee. Filed July* 21, 1884.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County, July Term, A. D. 1884.

JOLIET STEEL COMPANY
vs.
ST. LOUIS ORE AND STEEL COMPANY. } Att.

Interrogatories to each of the garnishees summoned in this case.

1st. Had you in your possession, charge or control, at the date of the service of the writ in this case, any moneys, rights, credits or effects owned by or due to the said St. Louis Ore and Steel Company, if so state what rights, amount thereof, by whom due, and when payable?

2d. Were you indebted to said defendant at the date of the service of said writ of attachment? If so, how much, for what due and when payable?

3d. Please state what effects or debts of defendant there were due at the date of said writ of attachment, in the hands of any other person or persons besides yourself, to the best of your knowledge and belief.

4th. Had you in your possession, charge or custody, at the date of the *the* said writ, any lands, tenements, goods or chattels of said defendant? If so, state the description of each, and the value thereof.

5th. Had you, at the date of the service of said writ, any rights, credits or effects of said defendant (not hereinbefore specified), in your possession, charge or custody, from you due and owing at the service of said writ, or any time since, or which may hereafter become due? If so, state the value, amount, when due, and how payable.

636 6th. Have you any property, goods, chattels, rights, credits or effects of any kind belonging to said defendant, or in which defendant is interested? If so, describe the same fully, giving amount, items, and describe the same fully and particularly.

ISHAM, LINCOLN, BURRY & RYERSON,
Pl'ff's Att'ys.

Filed July 29, 1884.

Conditional Judgment for $7,889.72.

United States Circuit Court, Northern District of Illinois.

SATURDAY, *October* 18, 1884.

Present: Hon. Henry W. Blodgett, district judge.

THE JOLIET STEEL COMPANY
vs.
THE NORTH CHICAGO ROLLING MILL COMPANY, as Garnishee of the St. Louis Ore and Steel Company, Defendant.
} Attachment and Garnishee Proceeding.

Now comes the plaintiff, by William Burry, Esq., its attorney, and moves the court for default and judgment against the North Chicago Rolling Mill Company, and it appearing to the court that the defendant herein has been duly served with process in an action of attachment and has filed its plea, and that the North Chicago Rolling Mill Company had been duly summoned herein as a garnishee of the defendant, and has failed to plead or answer the interrogatories herein, and the said The North Chicago Rolling Mill Company being now ruled to plead or answer forthwith, and it failing to plead or answer, and it being now three times solemnly called comes not but makes default. It is thereupon considered
637 by the court that its default be entered and that the plaintiff have and receive of the North Chicago Rolling Mill Company the amount of its claim against said defendant, and it appearing to the court from the affidavit and proof herein, that the defendant herein is indebted to said plaintiff in the sum of seven thousand, eight hundred and eighty-nine dollars, and seventy-two cents.

It is thereupon considered and adjudged by the court that a conditional judgment be and the same is hereby accordingly entered in favor of the plaintiff and against the North Chicago Rolling Mill Company as garnishee of the St. Louis Ore and Steel Company, defendant, in the sum of seven thousand, eight hundred and eighty-nine dollars and seventy-two cents, being the amount of the indebtedness of the defendant to the plaintiff, together with costs herein, and it is ordered that a writ of *scire facias* issue to said The North Chicago Rolling Mill Company returnable to the next term of this court for it to show cause why said conditional judgment with costs should not be made absolute, and the plaintiff have execution thereon.

Writ of Scire Facias, Served Nov. 14, 1884.

Circuit Court of the United States of America, Northern District of Illinois.

To the marshal of the northern district of Illinois, Greeting:

Whereas, a suit was commenced in the superior court of Cook county, in the State of Illinois, on the twenty-first day of July, A. D. 1884, by The Joliet Steel Company, plaintiff, against The St. Louis Ore and Steel Company, defendant, in an action of attachment, and the North Chicago Rolling Mill Company was duly served
638 on the same day with process of summons as a garnishee of said defendant, and said cause was on the twenty-fourth day of September, A. D. 1884, removed to and filed in our said circuit court of the United States for the northern district of Illinois;

And whereas, at the October term of our said circuit court, A. D. 1884, to wit: on the eighteenth day of October, A. D. 1884, a conditional judgment was rendered against the said The North Chicago Rolling Mill Company, as a garnishee of said defendant, in favor of said The Joliet Steel Company for the sum of seven thousand, eight hundred and eighty-nine dollars and seventy-two cents, and said The North Chicago Rolling Mill Company having been three times solemnly called, and it failing to appear and discover on oath or affirmation what lands, tenements, goods, chattels, moneys, credits and effects of the said defendant, The St. Louis Ore and Steel Company, were in its custody, charge or possession, or under its control, or what moneys or property were by it owing to said defendant, as is required by law, a conditional judgment for the above-named amount was by our said circuit court rendered against said garnishee, and this writ ordered to be issued.

Now, therefore, we command you to summon the said The North Chicago Rolling Mill Company, garnishee as aforesaid, personally to be and appear before our said circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, then and there to show cause, if any it has or can show, why final judgment should not be entered against it for said amount of $7,889.72 upon due execution and return of this writ, and have you then and there this writ.

639 Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-third day of October, A. D. 1884, and of our Independence the 109th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Answer of the North Chicago Rolling Mill Co. Filed Nov. 25, 1884.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

In the Circuit Court Thereof.

THE JOLIET IRON AND STEEL COMPANY
vs.
THE ST. LOUIS ORE AND STEEL COMPANY, } Attachment. No. 456.
The North Chicago Rolling Mill Company, Garnishee.

And now comes the said North Chicago Rolling Mill Company, summoned as garnishee in the above-entitled suit, and shows cause, etc., as follows:

In answer to all the interrogatories propounded by the said Joliet Iron and Steel Company, this respondent says that at the date of the service of the garnishee summons in said suit, to wit: July 21, 1884, there was an open and unsettled account between this respondent and the said St. Louis Ore and Steel Company. That said account grew out of the receipt of iron ore, and a quantity of pig-iron, from said last-named company, but whether said receipt was wholly or in a part for the account of said ore and steel company, or its assignee, or for the account of one R. M. Cherrie, or his assignee, or for the account of the Wabash, St. Louis and Pacific Railway Com-
640 pany, or its receivers and assignees, or for the account of the Boatmen's Savings Bank of St. Louis, Mo., or for the account of all said persons, this respondent cannot state with certainty, nor can this respondent state with certainty what proportion of that which may be due from this respondent on account of the receipt of said iron ore and said pig-iron belongs to any one of said persons.

This respondent further answering, says that involved in said account is an unsettled claim by this respondent for a rebate upon a portion of said ore as not being up to the required standard of quality; the amount of which said claim cannot now be stated with certainty. That involved also in said account is an unsettled claim by this respondent growing out of a sale of railroad rails to said ore and steel company, the amount of which said claim cannot now be stated with certainty.

Involved also in said account for iron ore and pig-iron, received as aforesaid, are the claims of certain attachment creditors, viz., the Iron Mountain Company, which on the 21st day of July, 1884, caused this respondent to be garnisheed in a certain suit then pending in the superior court of Cook county, wherein the said Iron Mountain Company is plaintiff, and the said St. Louis Ore and Steel Company is defendant.

The said Joliet Iron and Steel Company which, on the 21st day of July, 1884, caused this respondent to be garnisheed in a certain suit pending in said superior court, wherein the said Joliet Iron and Steel Company is plaintiff, and the said St. Louis Ore and Steel

Company is defendant, both of which cases are still pending and undetermined.

And now, having answered all of said interrogatories this
641 respondent prays to be hence dismissed with its reasonable costs.

NORTH CHICAGO ROLLING MILL CO.
[SEAL.] RICHARD C. HANNAH, *Sec'y.*

Attest: RICHARD C. HANNAH, *Sec'y.*

WILLARD & DRIGGS,
Attorneys for Respondent.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Richard C. Hannah, being duly sworn, says that he is the secretary of the above-named North Chicago Rolling Mill Company. That he has read the foregoing answer signed by said company, and knows the contents thereof, and that the same is true, to the best of his knowledge, information and belief.

RICHARD C. HANNAH.

Subscribed and sworn to before me this 21st day of November, 1884.

WM. H. McLEAN,
[SEAL.] *Notary Public.*

Order Giving Leave to Garnishee to File an Amended and Supplemental Answer. Entered February 25, 1885.

642 United States Circuit Court, Northern District of Illinois.

WEDNESDAY, *February* 25, 1885.

Present: Hon. Walter Q. Gresham, circuit judge.

THE JOLIET STEEL COMPANY
vs. } 456.
THE ST. LOUIS ORE AND STEEL COMPANY.

On motion of the garnishee, The North Chicago Rolling Mill Company, by its attorney, leave is given to it to file an amended and supplemental answer herein.

Amended and Supplemental Answer of the North Chicago Rolling Mill Company. Filed February 25, 1885.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court Thereof, December Term, A. D. 1884.

THE JOLIET STEEL COMPANY
vs.
THE ST. LOUIS ORE AND STEEL COMPANY, THE NORTH CHICAGO ROLLING MILL COMPANY Being Summoned as Garnishee.

The amended and supplemental answer of the North Chicago Rolling Mill Company.

And now comes the said North Chicago Rolling Mill Company, by Willard & Driggs, its attorneys, and by way of amended
643 and supplemental answer as garnishee in the above-entitled cause, and in addition to its previous answer herein, says:

That this respondent since the filing of its answer herein, on the 25th day of November, 1884, — the unsettled claims herein referred to of this respondent against the said St. Louis Ore and Steel Company, growing out of the dealings between this respondent and said company, have matured and are now susceptible of proof, substantially as follows, to wit:

That this respondent and the said St. Louis Ore and Steel Company, on or about the 1st day of December, 1883, entered into an agreement in writing, in words and figures following, to wit:

(Contract is here set out as shown in the intervening petition.)

That said St. Louis Ore & Steel Company did not on its part perform said contract, but failed and neglected to take and receive the installments of rails, which, under said contract were receivable during the months of July, August, September, October, November and December, which said several installments aggregated 10,881 $\frac{900}{2240}$ tons, or thereabouts, although this respondent was capable, ready and willing, and offered to furnish and deliver the said several installments of rails which under said contract were receivable by said St. Louis Ore & Steel Company during the months last aforesaid.

That by reason of the failure of the said St. Louis Ore & Steel Company to fulfil its said contract as above stated and set forth, this respondent suffered loss and damage in the sum of $28,390.16 for which said amount this respondent is advised by counsel and believes and charges the fact to be that the said St. Louis Ore & Steel Company is liable to this respondent in damages and is legally bound to pay the same to this respondent.

644 That said St. Louis Ore & Steel Company is further indebted to this respondent in the sum of $21,536.56 for rails furnished to said company in the month of June, 1884, under the aforesaid contract, and in the sum of $6,322.21 for freight charges

paid by this respondent for the account of said St. Louis Ore & Steel Company on ore and pig metal, and the sum of $458.66 for shortage in the required quality of certain iron ore sold and delivered to this respondent by said St. Louis Ore & Steel Company as hereinafter stated.

That to enable this respondent to meet its obligations under the aforesaid contract between it and the said St. Louis Ore & Steel Company it purchased of the said company a large quantity of iron ore of a certain grade to be delivered at the works of this respondent in Cook county, Illinois, free of transportation charges and to be paid for at the rate of $5.25 per ton and a large quantity of pig metal to be paid for, some at the rate of $18 per ton and some at the rate of $18.75 per ton of 2,240 pounds; to be delivered at the works of this respondent in Cook county, Illinois, free of transportation charges, in all aggregating the sum of $44,916.82.

That if the said St. Louis Ore & Steel Company, had fulfilled its said contract for the purchase of steel rails from this respondent as aforesaid and had paid this respondent for the steel rails which the said company did receive from this respondent under said contract and had paid the aforesaid freight charges on the ore and pig metal or had reimbursed this respondent in the sum or sums which it paid for the account of said St. Louis Ore & Steel Company in that regard; and if the said iron ore so as aforesaid bought by this respondent from said St. Louis Ore & Steel Company had been
645 of the required quality, then and in such case this respondent would have been indebted to the said St. Louis Ore & Steel Company in the sum of $44,916.82.

But this respondent is advised by counsel and believes and charges the fact to be that out of the aforesaid sums due to this respondent from the said St. Louis Ore and Steel Company and which aggregate the sum of $56,807.59, it has the legal and equitable right to set off a sum equal to the aforesaid aggregate amount of $44,916.82, wherefore this respondent says and charges the fact to be that at the time of the service of said writ of garnishment it was not indebted to the said St. Louis Ore and Steel Company, and has not since become indebted to the said company, but that in accounting between this respondent and the said St. Louis Ore and Steel Company as the same has matured upon accounts and contracts existing between the said companies at the time of the service of said writ of garnishment, there is a balance of $11,890.77 due to this respondent from said St. Louis Ore and Steel Company, to wit:

St. Louis Ore and Steel Company to the North Chicago Rolling Mill Company, Dr.

To damages for non-receipt of steel rails	$28,390 16
" damage non-payment July 10, 1884	100 00
" steel rails delivered and not paid for	21,536 56
" freight paid for acc't St. L. O. & S. Co	6,322 21
" shortage on ore	458 66
	$56,807 59

Contra.

By iron ore	$27,110 90	
" pig metal	17,805 92	
		$44,916 82
Balance		$11,890 77

646 And this respondent further answering avers that the said St. Louis Ore and Steel Company is insolvent, and that unless this respondent is allowed to set off its said claim against said ore and steel company in a manner aforesaid, it will lose the amount so as aforesaid due to it from the said St. Louis Ore and Steel Company.

This respondent further answering says that it is informed and believes, and charges the fact to be that the Boatman's Saving Bank, of St. Louis, a corporation having its principal office in the city of St. Louis, in the State of Missouri, has or pretends to have some claim upon the pig-iron received as aforesaid from the St. Louis Ore and Steel Company.

Wherefore and by reason of all which this respondent prays to be hence dismissed with its reasonable costs.

NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*

Attest: W. H. HANNAH, *Acting Sec'y.*

[SEAL.]

WILLARD & DRIGGS,
Att'ys for Garnishee N. C. R. M. Co.

STATE OF ILLINOIS, } ss:
Cook County, }

Orrin W. Potter being duly sworn, says he is president of the North Chicago Rolling Mill Company, the garnishee in the above-entitled cause. That he has read the foregoing answer of said garnishee and knows the contents thereof, and that the matters therein set forth are true to the best of his knowledge, information and belief.

O. W. POTTER.

647 Subscribed and sworn to before me this 23rd day of February, A. D. 1885.

[SEAL.]

WM. H. McLEAN,
Notary Public.

Replication of Joliet Steel Company. Filed May 6, 1885.

THE UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

THE JOLIET STEEL COMPANY
vs.
THE ST. LOUIS ORE AND STEEL COMPANY. } No. 456. Attachment.

The reply of the said plaintiff to the amended and supplemental answer of the North Chicago Rolling Mill Company, garnishee.

Said plaintiff, replying to said answer, says, that it does not waive or release any benefits or advantages from the conditional judgment heretofore entered in this cause against said rolling mill company, garnishee, but on the contrary it expressly insists upon all benefits and advantages thereof.

And further replying, it says, that it denies the execution of the contract in said answer set forth, or that if any such contract ever was executed, as therein set forth, it was not performed by the said St. Louis Ore and Steel Company, and denies that in connection with or growing out of any such alleged contracts, the said rolling mill company has in any way suffered any damages from said St. Louis Ore and Steel Company as set forth in said answer, and denies that if any such damages as are therein set forth have been sustained such damages can be set forth and claimed by said rolling mill company in said cause.

648 Said plaintiff denies that said St. Louis Ore & Steel Company is indebted to the said rolling mill company, as set forth in said answer, or in any manner, for rails, furnished by said rolling mill company to the said St. Louis Ore & Steel Company in the month of June, 1884, under said contract, or that said ore & steel company is indebted to said rolling mill company for freight charges paid by the said rolling mill company for the account of said St. Louis Ore & Steel Company as set forth in said answer; or for shortage in the quality of iron ore sold by the said St. Louis Ore & Steel Company to the said rolling mill company as is set forth in said answer, or that said St. Louis Ore & Steel Company is in any form or manner, indebted to the said rolling mill company upon any account. And further denies that if any indebtedness exists by the said St. Louis Ore & Steel Company to the said rolling mill company that it is of a character to be set forth by said garnishee in this cause. But the said plaintiff insists that the said rolling mill company is indebted to the said ore & steel company in a large sum to wit: in the sum of over forty-four thousand dollars, as is set forth in said answer. That out said indebtedness the said plaintiff is entitled to be paid by said rolling mill company the amount of any judgment which the said plaintiff may recover herein against the said St. Louis Ore & Steel Company, and to have judgment therefor.

And the said plaintiff insists that no good cause has been shown

why the said plaintiff on obtaining judgment against the said St. Louis Ore & Steel Company should not be entitled to have the conditional judgment heretofore rendered against the North Chicago Rolling Mill Company, made final.

649 All of which matters and things said plaintiff is ready to aver, maintain and prove, in accordance with law, and as this honorable court shall direct.

ISHAM & LINCOLN,
Plaintiff's Attorneys.

Order of Court Directing a Verdict Against Garnishee. Entered January 13, 1886.

WEDNESDAY, *January* 13, 1886.

Present: Hon. Charles E. Dyer, district judge.

THE JOLIET STEEL COMPANY *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, Defendant; The North Chicago Rolling Mill Company, Robert E. Jenkins, Assignee of Robert M. Cherrie, Garnishees; Solon Humphreys and Thomas E. Tutt, Receivers of the Wabash, St. Louis and Pacific Railway Company; Ethan A. Hitchcock, Receiver of said The St. Louis Ore and Steel Company, Interpleaders.	456.	Assumpsit, etc.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after hearing the concluding arguments of the counsel upon the motion of the plaintiff to strike out the evidence on the part of the garnishee, The North Chicago Rolling Mill Company, relating to the set-off claimed by said garnishee, for damages on account of the non-receipt of rails by said defendant, and to render judgment against said garnishee, upon its answers herein, and also upon the motion of the plaintiff for the court to instruct the jury to return a verdict for the plaintiff upon said interpleader of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific railroad, the

650 court being now fully advised upon said first motion of the plaintiff, sustains the same and orders that said evidence of said garnishee be stricken out, and that judgment be rendered upon the answer of said garnishee. It is thereupon considered and adjudged by the court that said defendant, The St. Louis Ore and Steel Company, do have and recover of said garnishee, The North Chicago Rolling Mill Company, for the use of said plaintiff, The Joliet Steel Company, and all others entitled to share therein, the sum of sixteen thousand four hundred and seventy-three dollars and twenty-eight cents, as damages, together with its costs herein, and that said defendant, for the use of said plaintiff and others entitled to share therein have execution therefor.

To which said ruling of the court the said North Chicago Rolling Mill Company now here excepts. And the court upon motion of said North Chicago Rolling Mill Company, stays the execution of the judgment against said garnishee, The North Chicago Rolling Mill Company, until the further order of the court herein.

And that said stay of execution be operative upon and against any assignee of this judgment and any party interested therein.

And the court being now also fully advised upon said second motion of the plaintiff, sustains the same, and now instructs the jury to return a verdict for the plaintiff in attachment upon said interpleader, and thereupon the jury return the following verdict, to wit: We, the jury find the issue joined upon the interpleader of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis and Pacific railroad, for said plaintiff, and that the said receivers are not entitled to any of the funds or property in controversy in this cause.

651 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court, Northern District of Illinois.

ST. LOUIS ORE & STEEL COMPANY, for Use of, etc.,
vs.
NORTH CHICAGO ROLLING MILL COMPANY, Garnishee.

Bill of Exceptions.

Be it remembered that on the trial of the above-entitled cause at the January term, A. D. 1886, of the circuit court of the United States for the northern district of Illinois before a jury, the Hon. Charles E. Dyer presiding as judge of said court, the defendant The North Chicago Rolling Mill Company, garnishee herein, to maintain the issues on its part, read its answers to the interrogatories propounded to it therein.

(Here insert.)

and also its amended and supplemental answer.

(Here insert.)

also the contract dated December 1, 1883, between the St. Louis Ore & Steel Company and the North Chicago Rolling Mill Company.

(Here insert.)

Also the following letters and telegrams:

(Here insert.)

Letters, dated January 19, 1884, O. L. Garrison to O. W. Potter.

Letter, dated January 19, 1884, Garrison to Potter.

Letter, dated January 30, 1884, Parkes to Garrison.

652 Letter, dated February 5, 1884, Garrison to Parkes.

Letter, dated February 7, 1884, Parkes to Garrison.

Letter, dated February 8, 1884, Garrison to Parkes.

Letter, dated February 15, 1884, Garrison to Parkes.

Letter, dated February 16, 1884, Garrison to Parkes.

Letter, dated February 28, 1884, Garrison to Parkes.

Letter, dated February 29, 1884, Parkes to Garrison.
Letter, dated March 1, 1884, Garrison to Parkes.
Telegram, dated March 6, 1884, Parkes to Garrison.
Letter, dated May 8, 1884, Garrison to Parkes.
Letter, dated May 13, 1884, Garrison to Parkes.
Letter, dated May 16, 1884, Parkes to Garrison.
Letter, dated May 17, 1884, Garrison to Parkes.
Letter, dated May 22, 1884, Whitehead to Potter.
Letter, dated May 29, 1884, Garrison to Potter.
Telegram, dated June 3, 1884, Potter to St. Louis Ore and Steel Company.
Letter, dated June 3, 1884, Garrison to Potter.
Letter, dated June 10, 1884, Garrison to Parkes.
Letter, dated June 27, 1884, Hannah to Cherrie & Co.
Letter, dated July 2, 1884, Garrison to Parkes.
Telegram, dated July 2, 1884, Parkes to Garrison.
Telegram, dated July 2, 1884, Garrison to Parkes.
Letter, dated July 5, 1884, Garrison to Potter.
Letter, dated July 5, 1884, Garrison to Lackland.
Telegram, dated July 14, 1884, Hannah to Garrison.
Telegram, dated July 15, 1884, Garrison to Potter.
Telegram, dated July 16, 1884, Hitchcock to Potter.
Letter, dated July 17, 1884, Hannah to Garrison.
Telegram, dated July 18, 1884, Parkes to Hitchcock.
Telegram, dated July 18, 1884, Parkes to Garrison.
Telegram, dated July 22, 1884, Hitchcock to Potter.
Telegram, dated July 24, 1884, Garrison to Hannah.
653 Telegram, dated July 25, 1884, Hitchcock to Potter.
Telegram, dated July 25, 1884, Potter to Hitchcock.
Telegram, dated July 25, 1884, Hitchcock to Potter.
Telegram, dated July 25, 1884, Hitchcock to Potter.
Telegram, dated July 25, 1884, Potter to Hitchcock.
Letter, dated July 26, 1884, Howard to Hitchcock.
Letter, dated July 26, 1884, Hitchcock to Potter.
Letter, dated July 26, 1884, Garrison to Potter.
Letter, dated July 29, 1884, Garrison to Potter.
Telegram, dated July 30, 1884, Potter to Hitchcock.
Telegram, dated July 30, 1884, Hitchcock to Potter.
Telegram, dated July 31, 1884, Hitchcock to Potter.
Letter, dated July 31, 1884, Garrison to Potter.
Letter, dated July 31, 1884, Potter to Hitchcock.
Telegram, dated July 31, 1884, Potter to Hitchcock.
Letter, dated August 1, 1884, Hitchcock to Potter.
Telegram, dated August 2, 1884, Potter to Hitchcock.
Letter, dated August 2, 1884, Hitchcock to Potter.
Telegram, dated August 4, 1884, Potter to Hitchcock.
Letter, dated August 4, 1884, Hitchcock to Potter.
Letter, dated August 6, 1884, Potter to Hitchcock.
Letter, dated August 12, 1884, Hitchcock to Potter.
Letter, dated August 12, 1884, Garrison to Hannah.
Letter, dated August 13, 1884, Parkes to Talmadge.

Letter, dated August 13, 1884, Parkes to Garrison.
Letter, dated August 13, 1884, Potter to Hitchcock.
Letter, dated August 14, 1884, Hitchcock to Potter.
Letter dated August 15, 1884, Garrison to Potter.
Telegram, dated August 19, 1884, Hitchcock to Potter.
Letter, dated August 19, 1884, Potter to Hitchcock.
Telegram, dated August 20, 1884, Garrison to Hannah.
Letter, dated August 21, 1884, Garrison to Potter.
Letter, dated August 22, 1884, Garrison to Hannah.
654 Letter, dated August 22, 1884, Garrison to Potter.
Letter, dated August 25, 1884, Potter to Garrison.
Telegram, dated August 26, 1884, Garrison to Potter.
Telegram, dated August 26, 1884, Potter to Garrison.
Telegram, dated August 26, 1884, Garrison to Potter.
Telegram, dated August 26, 1884, Potter to Garrison.
Letter, dated August 26, 1884, Hitchcock to Potter.
Letter, dated August 27, 1884, Hitchcock to Potter.
Letter, dated August 28, 1884, Potter to Hitchcock.
Letter, dated August 29, 1884, Hitchcock to Potter.
Letter, dated August 29, 1884, Garrison to Hannah.
Letter, dated September 1, 1884, Garrison to Hannah.
Letter, dated September 1, 1884, Hitchcock to Potter.
Telegram, dated September 1, 1884, Potter to Hitchcock.
Letter, dated September 2, 1884, Parkes to Hitchcock.
Letter, dated September 2, 1884, Garrison to Hannah.
Letter, dated September 3, 1884, Hitchcock to Potter.
Letter, dated September 6, 1884, Hannah to Garrison.
Letter, dated September 12, 1884, Hannah to Jenkins.
Letter, dated September 17, 1884, Garrison to Hannah.
Letter, dated September 19, 1884, Potter to Hitchcock.
Letter, dated September 22, 1884, Hitchcock to Potter.
Letter, dated September 23, 1884, Potter to Hitchcock.
Letter, dated September 24, 1884, Hitchcock to Potter.
Letter, dated September 25, 1884, Potter to Hitchcock.
Letter, dated September 26, 1884, Hitchcock to Potter.
Letter, dated September 27, 1884, Potter to Hitchcock.
Telegram, dated October 9, 1884, Potter to Hitchcock.
Telegram, dated October 10, 1884, Parkes to Hitchcock.
Letter, dated October 10, 1884, Hitchcock to Potter.

655 Counsel for the North Chicago Rolling Mill Company then read in evidence a contract dated December 26, 1883, between R. M. Cherrie under the firm name of Cherrie & Co., of Chicago, and the North Chicago Rolling Mill Company.

Counsel for the North Chicago Rolling Mill Company also read the following letters in evidence:

Letter, dated January 14, 1884, Parkes to Cherrie & Co.
Letter, dated January 23, 1884, Parkes to Cherrie & Co.
Letter, dated January 23, 1884, Parkes to Cherrie & Co.
Letter, dated January 29, 1884, Parkes to Cherrie & Co.
Letter, dated April 28, 1884, Potter to Cherrie & Co.
Letter, dated May 6, 1884, Parkes to Cherrie & Co.

Letter, dated May 6, 1884, Cherrie & Co. to Potter.
Letter, dated May 6, 1884, Garrison to Cherrie & Co.
Letter, dated May 7, 1884, Potter to Cherrie & Co.
Letter, dated May 10, 1884, Parkes to Cherrie & Co.
Letter, dated May 12, 1884, Cherrie & Co. to Parkes.
Letter, dated May 14, 1884, Cherrie & Co. to Potter.
Letter, dated May 14, 1884, Potter to Cherrie & Co.
Letter, dated May 14, 1884, Parkes to Cherrie & Co.
Letter, dated May 14, 1884, Cherrie & Co. to Parkes.
Letter, dated May 15, 1884, Cherrie & Co. to Potter.
Letter, dated May 21, 1884, Parkes to Cherrie & Co.
Letter, dated May 31, 1884, Parkes to Cherrie & Co.
Letter, dated May 31, 1884, Parkes to Cherrie & Co.
Letter, dated June 1, 1884, Cherrie & Co. to Parkes.
Letter, dated June 2, 1884, Parkes to Cherrie & Co.
Letter, dated June 5, 1884, Parkes to Cherrie & Co.
Letter, dated June 6, 1884, Cherrie & Co. to Parkes.
Letter, dated June 12, 1884, Parkes to Cherrie & Co.
Letter, dated June 26, 1884, Parkes to Cherrie & Co.
656 Letter, dated July 24, 1884, Thompson to Potter.
Letter, dated July 25, 1884, Potter to Thompson.
Letter, dated July 25, 1884, Potter to Hitchcock.
Letter, dated July 26, 1884, Thompson to Potter.
Letter, dated July 29, 1884, Potter to Thompson.
Letter, dated July 29, 1884, Potter to Garrison.
Letter, dated July 30, 1884, Thompson to Potter.
Letter, dated July 31, 1884, Potter to Thompson.

Thereupon the said garnishee introduced the following testimony.

O. W. POTTER, a witness called on behalf of defendant, being first duly sworn, was examined in chief by Mr. WILLARD and testified as follows:

Q. Mr. Potter, you are president of the defendant, The North Chicago Rolling Mill Company?
A. Yes, sir.
Q. And have been for how many years?
A. I don't remember, eight or ten.
Q. And as such president you are and have been constantly familiar with its business in all its details, have you?
A. I have.
Q. Do you know the St. Louis Ore & Steel Company and its officers?
A. I do.
Q. Cherrie & Company of Chicago?
A. I do.
Q. You have a knowledge of the rail contract read in evidence here, between the St. Louis company and your company, dated in December?
A. I have and with the ore contract.

Q. And with the progress of the performance of the
657 contract so far as it went, by the respective parties under it?

A. Yes, sir.

Q. Can you approximate the amount of rails which were not received under that contract?

A. Do you mean that were not received by the St. Louis Ore & Steel Company?

Q. Yes.

A. It was, I believe, between ten and eleven thousand tons.

Q. Do you know about what time the receipt of rails ceased on the part of the St. Louis company?

A. I believe it was in July, 1884.

Q. Are you certain there were not some delivered after July, a small quantity?

A. I am not positive as to that.

Q. You may state, Mr. Potter, if you please, how the North Chicago Rolling Mill Company was situated with reference to its ability, or non-ability, to manufacture and deliver the entire amount of rails called for by that contract.

A. It was ready at any and all times to carry it out fully.

Q. Did it have on hand, and under contract, the requisite material for that manufacture?

A. It had.

Q. Was any of the material necessary for the manufacture of those rails obtained from the St. Louis company?

A. The material that was used for their manufacture was obtained of that company.

Q. You may state as definitely as you can, what material
658 was received from the St. Louis company which went into the manufacture of the rails delivered under that contract.

A. It was what we classed as Pilot Knob iron ore that came from the St. Louis Ore and Steel Company's mines, and also pig metal, and some spiegeleisen bought of that company.

Q. You may state whether the purchase of that material had anything to do with reference to the performance of that contract for the manufacture of rails.

(Objected to by counsel for plaintiff.)

The COURT: He may state the fact; state what was done.

A. I don't know as I understand your question clearly now.

The COURT: What connection one had with the other, if any?

Mr. WILLARD: What connection, if any, had the purchase of the material, the ore and pig metal, with reference to the manufacture of the rails on the contract?

A. We used the ore.

The COURT: That is, so far as such connection is shown by the acts of the parties.

Mr. BEALE: What connection had their purchase from that particular company?

The COURT: That is what I suppose Mr. Willard means.

Mr. WILLARD: Most assuredly, your honor.

A. The pig metal and ore and spiegeleisen went into the manufacture of the rails in part that were delivered to those people.

Q. Was it purchased by you for that purpose, among other purposes?

A. Yes, sir.

659 Q. It was necessary, was it, in order to enable you to manufacture your rails?

(Objected to as leading.)

Q. Was it not necessary to enable you to manufacture the rails which you were under contract to deliver?

A. The ore was purchased for that purpose.

Q. How was it about the pig metal?

A. The pig metal as well.

The COURT: You say this metal was purchased for the purpose of making these rails?

A. I do not wish to be understood that way. It was purchased for the purpose of making rails, and entered into the manufacture of these rails made for the St. Louis Ore and Steel Company.

Q. Did you manufacture any rails except in fulfillment of your contracts of purchase theretofore made?

A. I don't know that I am clear in that question, Mr. Willard.

Q. In other words, do you manufacture rails in advance of any——

A. Of any contract?

Q. Yes.

A. Practically, no, sir.

Q. That is generally so, is it not, with all rolling mill companies?

A. It certainly is with our own.

Q. And they provide materials for that manufacture in accordance with the contracts they have for making rails?

A. Yes, sir.

Q. What was the condition of the rail market throughout the year, 1884, Mr. Potter?

A. Practically a declining market.

660 Q. Beginning in the fore part of the year, and continuing throughout the year?

A. Yes, sir, so that there was a difference of between five and six dollars a ton in the price of rails in that year.

Q. You may state whether the value of pig metal and metallic ore is affected by the demand and market value of railroad rails.

A. So far as ores and pig metal are used in making those rails, yes. Of course your honor will understand that there are ores and pig metals that will not make steel rails, and they would not be affected by the price of steel railway bars.

Q. Did you manufacture the balance of the rails called for by this contract and not received, or did you only manufacture so far as called for by the St. Louis company?

A. We manufactured so far as called for, and their ability to pay for them.

Q. What amount of rails did you have on hand that were manufactured for this contract which were not delivered?

A. Practically none.

The COURT: Do you say that practically no rails manufactured for the St. Louis company were on hand?

A. Yes, sir; there were no rails made that were not delivered to them.

Mr. WILLARD: What did you do with the material which you had on hand, and which would have gone into the manufacture of rails for the completion of that contract?

A. The materials remained on hand and went into the rails the following year at a good deal less price.

Q. About how much less?

661 A. Between five and six dollars less per ton.

Q. You may state whether you had any other means of disposing of that material, except the use of it in the manufacture of rails at the price you have stated, $35 per ton.

A. No, sir; we had not.

Q. That was the best purpose to which those materials could be put then?

A. Yes, sir; and we could have sold the rails but for this contract with the St. Louis Ore & Steel Company at a price which would have given us the use of this material at the same price that we had made sales to the St. Louis Ore & Steel Company.

Q. When could you have thus made sales?

A. At the time this contract was made with the St. Louis Ore & Steel Company.

Q. Could you afterwards?

A. We could not.

Q. Have you made a calculation of the amount of damage, if any, which resulted to your company from the non-receipt of the total amount of rails called for under this contract?

A. There has been such a calculation made at my request and under my supervision.

Q. Do you know in what way it was calculated, and the amount of it?

A. I know the way in which it was calculated. The amount of it is some $28,000.

Q. Can you state the exact amount?

A. I don't know that I have it. I cannot. It is twenty-eight thousand and some dollars. The statement is with your papers somewhere.

Q. Here is the paper. (Handing paper to witness.)

662 A. $28,390.16.

Q. Now you may state to the court and to the jury how you reached that result.

A. Our contract with the St. Louis Ore and Steel Company was for rails at $35 per ton, and for which we had purchased our materials to fill that contract, and this material went into rails that netted us $29.50 a ton; and in arriving at the loss that we sustained on the ores that we had on hand. We took the quantity of ore that

it would take to make a ton of rails and its value on the basis of $35 per ton and its value on a basis of $29.50 per ton. In other words it would require to make the rails referred to 21,236 tons of ore, and our loss on that ore was eighty-six and a half cents per ton, aggregating $18.369.14 on the ore. Then, in our process for making rails at our South Chicago works, where these rails were made, the molten metal is taken from the blast furnace and converted direct. By reason of their failure we had this pig metal to cast into pig-iron and which, when put into rails at $29.50 (the price), had to be remelted; the cost of remelting that metal was a dollar a ton, making $4,000 for that. Then, on our spiegeleisen that had been bought, the loss figured in the same way, was $4,141 on that; and on 2,000 tons of coke that had been bought, that would have beed used in the making of these rails, the loss that we sustained in that, by reason of the reduction in the price of coke, made $1,080 in the coke. The aggregate of these different items being $28,390.16.

Q. You may state, Mr. Potter, whether or not those sources were actually the only source of damage to the company on account of the non-manufacture of rails. Are there, or are there not some other damages which are more remote than those stated.

663 For instance, the question of keeping your mills employed, and the question of keeping your employees employed, and so forth?

(Objected to by counsel for plaintiff.)

The COURT: Isn't that too remote?

Mr. WILLARD: It is certain we have not claimed it, and why we have not claimed it, is that it is less certain than this; this damage is absolutely certain; the other is more remote and less certain. I want it to appear that there is other damage that they have suffered, more or less remotely connected with this, for which we have not made any claim.

A. Our works were idle an entire month on account of the non-delivery of these rails.

(Objected to by counsel for plaintiffs.)

The COURT: It seems to me this ought to be confined to such damages, if any, as you are in law entitled to recover.

Mr. WILLARD: That is undoubtedly correct, your honor.

The COURT: We will confine it to those.

Cross-examination by Mr. BEALE:

Q. Mr. Potter, included in this claim for damages, is there any loss of profits?

A. No, sir.

Q. This claim is made up merely on loss of material and of expense of transforming that material, changing its form, in different ways, or of extra work with it, so that you could use it in other contracts?

A. I don't know that I get your meaning.

Q. For instance you had to remelt some of the pig metal?

664 A. Yes, sir.

Q. That is what I consider an expense of transforming and changing its condition.

A. In that case, yes.

Q. Those two items, then, the falling of the cost of material, and the expense of changing the condition of the material, make up your claim for damages?

A. Our claim for damages is made by figuring the price of rails under the contract we had with the St. Louis Ore and Steel Company; the price that we paid for the material, and the price that we got for it under the reduced contracts that we made with other parties afterwards, by reason of the failure of the St. Louis Ore and Steel Company to carry out its contract.

Q. You mean, as I understand you, figuring this material at what it was worth as part of the rails which you had agreed to furnish to the St. Louis Ore and Steel Company?

A. Yes, sir.

Q. And not what you had actually paid for it?

A. No, sir.

Q. Would that not include then, a certain element of profit?

A. I think not. It was not the intent to figure any element of profit at all. It has not been considered at all by us.

Q. There was some profit to your company, was there not, in manufacturing rails which you sold at $35 a ton?

The COURT: $29.50.

Mr. BEALE: No, I mean the original contract.

A. No, sir.

Q. There was a profit in there, was there not?

665 A. Well, it was very slight, we may have got out even.

Q. In figuring the worth of the ore as such, as a portion of the rails at $35 a ton, do you not increase a little over what it actually costs you in money?

A. No, sir, we do not.

Q. I don't understand why that should be the fact. Will you explain to us? It would seem to be natural that it would increase the worth of that ore.

A. What would increase it?

Q. That to figure it on the basis of a component part of the rails would really be increasing it over its actual money cost to you.

A. I think the statement that his honor has made will show that the ore for a ton of rails, cost us so much money; our contract will show that, taking the price for the ore, the freight paid on it, the labor in unloading it, would practically be the cost to us, which is really the money that we have paid for the ore; no profit figured in it at all.

The COURT: Eighty-six and a half cents per ton?

A. That is the difference, I think, between what we should have received——

Q. What does this mean: "Ore at $11.02 old price in ton of rails"?

A. It would mean that we received—where that ore cost us, for instance $11.02—we received $29, fifty thirty-sixths of what when we did sell it through the medium of steel rails on the $29.50 contract. That is what we got for it, and we bought it to put it into the rails for the St. Louis Ore and Steel Company on a $35 basis. In other words, if their contract had been carried out, the difference would have been 86½ cents as between what we got for it when it was carried out under another contract by reason of their failure.

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Mr. BEALE: Would not a ton of pig-iron, figured as an element in a ton of rails at $35 a ton show a larger sum for that value than its actual cost?

A. I don't understand your question.

Q. My question is clear in my own mind, but I don't know that I am expressing it clearly. It grows out of your method of stating the computation of the value of the pig metal. Into every ton of steel rails that you roll, there enter certain items, as I understand you?

A. Yes, sir.

Q. One of those being pig metal. Now rails being $35 a ton, and the pig metal such a part of every ton of the rails, you would from those figures compute a part of the $35 which you would charge up to the pig metal, wouldn't you?

A. Yes, charge it up to the rails.

Q. Which you would credit to the pig metal?

A. Yes, sir.

Q. Now don't you by that method of computation fix the price of the metal at more than you would if you worked it up the other way, as to what it actually cost you, and add the labor and freight, and so forth?

A. If we have bought material based upon certain contracts. I don't see the relation that your question has to it.

Q. It seems to me that your method of computation must, or might, include an element of profit in it; that is what I am trying to get at. I don't know whether the court thoroughly understands my question or not, but I cannot ask the question as plainly as an expert would, because I am not familiar with all the materials and their proportions that enter into a ton of iron; but assuming that a certain proportion, which could be readily ascertained by a gentleman as familiar as yourself with the process of manufacturing rails—say that the pig metal, for the sake of argument, is a quarter or a fifth—say the pig metal is a fifth of the value of a ton of steel rails—if a fifth, you would figure it at $7. Now, would that necessarily be the same for the value of the pig metal as you would ascertain it to be if you had taken by your books just what it cost you in money, and built it up, instead of working it back?

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A. In this case we have practically taken, at the actual cost to us in money, all of the material that was bought for this purpose.

Q. That answers the question differently; that is practically what I want to get at, whether you have or not?

A. Yes, sir.

Q. The court will understand my meaning. I want it to see whether the element of profit was entirely excluded, and, as I understand your last answer to my question, the amount at which you had charged up the pig metal against the St. Louis Ore and Steel Company is substantially its actual cost to your company?

A. Yes, sir.

Q. During the execution of this contract that is the performance of it, between your company and the St. Louis Ore and Steel Company, were you not engaged in working out other contracts?

A. Yes, sir.

Q. From what source did the materials come for the performance of those contracts?

668 A. The ores came principally from Lake Superior, and the pig metal, we made the majority of ourselves. Other than that all the pig metal I think we bought came through Mr. Cherrie from the St. Louis Ore and Steel Company.

Q. All that you bought?

A. I think all that we bought, yes, sir.

Q. Didn't some of the materials, ore, pig metal, and spiegel iron bought by your company from the St. Louis Ore and Steel Company, find its way into rails manufactures for other corporations, or other parties?

A. Yes, sir.

Q. And didn't the rails manufactured by you for account of the St. Louis Ore and Steel Company, include in their composition the materials obtained from other sources than the St. Louis Ore and Steel Company?

A. Yes, sir.

Q. What effort did you make after the month of July, after the appointment of a receiver of the St. Louis Ore and Steel Company, to dispose of the materials which you had obtained from the St. Louis Ore and Steel Company, if any?

A. Do you mean for the deliveries of rails in place of those that they had defaulted in?

Q. No; what efforts did you make of any kind to dispose of the material, either by working up the material into other rails, or other products which you were manufacturing, or by sale or otherwise?

A. We practically made little or no effort, for the reason that with the contract that we had with the St. Louis Ore and Steel Company, and our other contracts, it practically filled our works for that year, and we didn't take any work that could in any way interfere with our filling the contract for the St. Louis Ore and Steel

669 Company at any time they asked us to fill it. We felt that we had no right to do it.

Q. But along in August and September it began to be evident to your mind, did it not, that this contract which you had with the St.

Louis Ore and Steel Company would not be carried out by the receiver?

A. Yes, sir.

Q. And at that time you had on hand these materials which you had obtained directly or indirectly from the St. Louis Ore and Steel Company?

A. Yes, sir.

Q. Now, why did you not at that time, make some immediate effort to dispose of this material to advantage?

A. We did all that through Mr. Hitchcock for the Missouri Pacific Railway Company, by reducing our price to them. Practically, the contracts for rails delivered for the year 1884 had all been placed; practically, we were where we could get no work at that time; we then asked Mr. Hitchcock if it was possible for him, even at a lower price, to get the Missouri Pacific to take their rails. That was the effort we made, and we could not sell our rails.

Q. As shown by the letter here which has been read in evidence?

A. Yes, sir.

Q. That was the only effort made by you, was it?

A. I will not say that; that it is the only one.

Q. I did not understand you to say that; I asked the question whether it was?

A. I will not say that it was.

Q. What others were there?

670 A. My judgment was that we would not undertake to sell to other parties if we were liable to be called upon for filling this order, because prices had depreciated, as I say, from five to six dollars, and so we would have to sell them for much less money. Then, if these people came in and wanted their contract filled, we could not fill it. But we tried to have them, through a reduced price, take the rails, if they would, in order to work our material off.

Q. In other words, in effect, you were keeping yourselves where you could jump either way?

A. We always kept ourselves where we could fill that contract.

Q. That is what I mean?

A. Yes, sir.

Q. Had you ever had any transaction with the St. Louis Ore and Steel Company prior to the entering into this contract for the manufacture of rails?

A. I believe we had; yes; more or less dealings with them in the purchase of pig-iron and other materials.

Q. Over how long a period had such prior transactions extended?

A. Oh, I think we had done business with them, at intervals, for four or five years, but I will not pretend to be explicit on that.

Q. During that time you had purchased metal and ore, had you?

A. I think metal only; I believe not ore from them, and yet we may have purchased some ore, but this was the largest transaction we ever had with them.

Q. Had you, before that time, ever manufactured any rail for them?

A. For them, no, sir.

Q. Or upon their orders?

A. Practically, no.

671 Q. What negotiations, if any took place between the North Chicago Rolling Mill Company and the St. Louis Ore and Steel Company, in relation to the purchase by your company from that company of ore before this rail contract was made for the purchase of any ore delivered in 1884?

A. I think I would have to go around a little in answering that question, that is in reciting in a measure the history of it.

Q. Very well.

A. I think in the latter part of 1883, our Mr. Parkes, our general manager, had some conference with Mr. Cherrie and he reported to me, after having had I think several interviews with Mr. Cherrie that by reason of Mr. Cherrie's position he, Mr. Cherrie, had and did control a good deal of the business of the character that our company were doing; and he said he believed that Mr. Cherrie could be of service to us and that we could be of service to him; he by the transfer of rail contracts to us and our own company by buying ore through him of this St. Louis Company; and I said to him, Mr. Parkes, I could see no reason why that would not be mutually advantageous and to look it up pretty carefully, and it resulted in our having a conference with Mr. Cherrie in which he substantially said to us that through the St. Louis Ore and Steel Company that they would be glad to ship ore, the Missouri Pacific and the Wabash railways would be glad to get the business of hauling that ore to Chicago and that the probabilities were the St. Louis Ore and Steel Company would not manufacture rails at the prices current for 1884, and that they might, if we could purchase ore from them, they

672 might turn the rail contracts into our hands to our mutual benefit, and out of that grew our contract with Cherrie & Co. for the 50,000 tons of ore and the contract with the St. Louis Ore and Steel Company for the 18,000 tons of rail.

Q. My question related to conferences or negotiations direct with the St. Louis Ore and Steel Company?

A. Practically we were informed, I will not say by them, but I think so, that our negotiations should be through Cherrie & Co., and they practically were their selling agents for this material.

Q. Can you remember the date of these negotiations?

A. I cannot, but I think it was between October and December; I am not sure but it run back even a little further than that; beginning with the negotiations between our general manager and Mr. Cherrie.

The COURT: You have stated, Mr. Potter, in your direct examination, that the receipt of the rails by the St. Louis Company ceased in July. I want to ask you just what you mean by that, so we may understand it.

A. I think that was qualified, that is, I believe that they ceased then, that is to say, that we then became aware of the trouble with the

St. Louis Ore and Steel Company, and we could get no satisfaction from them that they were in any condition to carry out their contract, and we stopped the delivery of rails until we could get some definite information from them as to their ability to carry out their part of it.

Q. At what time in July was that?

A. I think it was—I will not pretend to say, but the latter part of July.

Q. Was the delivery of rails thereafter, to any extent resumed?

673 A. I think not.

Q. None delivered after the receiver was appointed?

A. I think we delivered some rails to the Wabash road, but it was practically on a contract with the Wabash in which they agreed to make the payment themselves.

Mr. BEALE: Having reference to that letter of Mr. Howes?

A. I believe so.

Cross-examination by Mr. HUTCHINSON:

Q. Mr. Potter, can you state definitely whether you had ever purchased any ore of the St. Louis Ore and Steel Company before the contracts you made with Mr. Cherrie?

A. I will not pretend to say that we did not. My judgment is that we have, but I am not clear upon that.

Q. It was in very small quantities, was it not?

A. Yes, sir, to no such extent as our final contract.

Q. If at all?

A. No, sir.

Q. Have you ever purchased any pig metal to any amount?

A. I should say yes, considerable.

Q. Considerable?

A. I think so.

Q. You had prior to that time made a large quantity of steel rails, I suppose; that has been your business?

A. Yes, sir.

Q. About how many tons of rails did you turn out in a month, ordinarily?

A. From ten to twenty thousand tons a month.

Q. What proportion of the rails which you were making during the first half of the year 1884 did the St. Louis Ore and Steel Company take?

674 A. What proportion of the rails?

Q. Which you made?

A. I don't remember the entire amount that we made for 1884, but I should think that it was in the neighborhood of 150,000 tons, of which they took about 10,000; took about 8,000. I will not be clear that it was 150,000 tons in 1884; we may have the data here.

Q. I mean the first half of 1884?

A. How many rails were made the first half of the year 1884?

Q. Yes; while you were delivering rails to the St. Louis Ore and

Steel Company. I want to ascertain what proportion of the rails you made were taken by the St. Louis Ore and Steel Company.

A. I should have to refer to our books for that; I do not remember.

Q. You can give a general idea, can't you?

A. I should say fifty or sixty thousand tons, but I will not say definitely.

Q. And the ore and steel company took about eight thousand?

A. Yes, sir.

Q. Now, the ore which you received from the St. Louis Ore and Steel Company went into the rails generally that you made, didn't it?

A. Yes, sir.

Q. You didn't have any reference to the rails which the St. Louis Ore and Steel Company took, in using up this ore did you? You didn't have any reference to its entering into those rails?

A. I don't know that I get your idea.

Q. Did the ore which the ore and steel company furnished
675 you go into the rails which you sold to the ore and steel company in any larger proportion than it did into any other?

A. I should say, no, sir.

Q. The ore which you received from the ore and steel company, then, was not necessary to the manufacture of the rails which you furnished them at all, was it?

A. Not a necessity; no, sir.

Q. You have said, I think, that the pig metal, or some portion of it, went into the rails furnished to the ore and steel company?

A. Yes, sir.

Q. About how long did the ore and steel company furnish you pig metal; when were the deliveries made?

A. I cannot answer you that question from memory, but I think it was all delivered within four or five months.

Q. Wasn't it much less than that—within two or three months?

A. I will not pretend to say, it may have been.

Q. Spiegel iron, how long did you take that?

A. I think that was all delivered practically at one time; we may have been possibly two weeks or more in receiving it.

Q. You purchased most of your spiegel iron elsewhere, didn't you?

A. Yes, sir.

Q. And made the most of your pig metal?

A. Yes, sir.

Q. This, I suppose, was to supply a temporary want?

A. Yes, sir; it was a deficiency in the purchase of ore; it was for the same reason; we bought this ore for the general manufacture of rails, and if we had not bought from the St. Louis Ore and
676 Steel Company we should have bought from other parties, but we bought from them because they—the understanding substantially being with Mr. Cherrie, that it would give a certain amount of freight to the railways on the ore, and that it would give

us a certain amount of business from those same railways in the rails, and the trades were really joint trades.

Q. The trade for the purchase of ore was with Mr. Cherrie; there cannot be any doubt about that I suppose?

A. It was with Mr. Cherrie, but we knew that the St. Louis Ore & Steel Company were going to furnish the ore.

Q. You knew it was coming from the St. Louis Ore & Steel Company?

A. We knew that they were the parties to it.

Q. In reference to the decline of material which you had on hand, when did you calculate the decline, or the amount of the decline; as of what date did you estimate it?

A. I cannot tell you the exact date; but it was based upon the difference in our contracts; we commenced contracting, if you please, say, along in August I think, of 1884 for 1885 deliveries, as there was a constant falling market, and we then undertook to get the best prices we could get at that time, and after our contracts were made and our year 1884 was ended, showing that we were through with the St. Louis Ore & Steel Company, so far as their contract was concerned, we then took the price that we had received for rails in 1884, and the price that we would receive under our contracts in 1885, and that was the basis upon which this estimate of damage to us was made.

Q. Did you consider during all the year 1884 that you were under obligations to carry out that contract with the St. Louis Ore & Steel Company?

677 A. We did, and have so advised them from month to month, and that we should hold them for damages if they did not carry it out.

The COURT: From month to month after what time?

A. Practically after their failure in July.

Mr. HUTCHINSON: Then you did not treat the contract as having been terminated?

A. No, sir.

The COURT: Did you not some time in August?

A. Treat the contract as having terminated, no, sir.

Q. Treat the contract as being——

A. As being in jeopardy.

Q. As being broken?

A. Yes, sir.

Q. I speak of it with reference to the letter of, I think, August 6th?

A. Yes, sir.

The COURT: That I believe in effect was a declaration by Mr. Potter to the St. Louis company that they held the St. Louis company responsible for a breach of the contract.

Mr. BEALE: How much ore did your company receive upon this contract with Mr. Cherrie?

A. All of it, some fifty thousand tons.

Q. For how much did you pay?

A. $5.25 a ton.

Q. For what portion of it did you pay, did you pay for all of it?

A. Yes, sir—well, I don't know. I will not say we paid for all of it. I think we stopped paying when they began to fail all along the line. We wanted to know whom we had got to pay us.

678 Q. I think you have not answered the first question exactly as you might if I had explained it a little more fully. I mean, how much of the ore directly connected with the Cherrie contract did you receive?

A. I cannot give you the data, but I think that the bulk of the ore was delivered during the existence of our transactions with Cherrie & Co. That was before their failure; I think the larger portion of it was delivered.

Q. Was it not all delivered at the time of his assignment, or within two or three days thereafter, with the exception of about 2,000 tons?

A. I will not pretend to answer that; it may have been so, but I do not remember details close enough for that; I know there was a large portion of it delivered, but I know there was some carrying out of the contract afterwards, both by Mr. Garrison for the St. Louis Ore and Steel Company, and some ore delivered afterward by the receiver, but whether they went to make a part of the fifty thousand tons, I will not pretend to say.

Q. Or whether it was a new arrangement?

A. Or whether it was a new arrangement, our secretary can answer that.

Q. But as to the ore which you received upon this contract with Cherrie & Co., you paid him, did you not?

A. Yes, sir.

Mr. HUTCHINSON: Had you not, Mr. Potter, previous to the first of August, 1884, used up all the material, the ore, the spiegel iron and the pig-iron which you had received from the St. Louis Ore and Steel Company?

A. No, sir; we had ore on the first day of January, 1885.

Q. Any quantity, any amount?

A. I will not pretend to say the quantity, but we had I think in July, our inventory shows, quite a large amount of it, and even some of it on hand in January.

679 Mr. BEALE: Did you have any ore on hand at the time when you made this computation or at the time with reference to which you made it, which you had obtained from Cherrie & Co.?

A. I should say yes.

Mr. HUTCHINSON: Now, Mr. Potter, were you not urging Cherry to deliver this ore, and were you not claiming during the time of its delivery that you were getting short of ore?

A. I think more than likely.

Q. So that you could not have had much on hand?

A. Well, we had our inventory, I think, in July showed it was somewhere between five and ten thousand tons of it then, because this was early in the springtime, and we would begin to get our ore

by lake as soon as navigation opened; there was a breach there and I think we hurried them; the same way in pig metal because we had contracted to deliver all of the rails we could deliver.

Redirect examination by Mr. WILLARD:

Q. You have referred to the receipt of ore from the steel company after Cherrie & Co.'s failure; when and under what arrangements if any was that ore received by you?

A. I think immediately after Mr. Cherrie's failure, I believe it was the 3d or 4th of July; it may have been the 5th that Mr. Garrison was in this city and was at our office—Mr. Garrison the secretary of the St. Louis Ore & Steel Company—and there was ore in transit then between the mines of the St. Louis Ore & Steel Company and our works. The Wabash railway agent came also to our office and said that there was considerable due them for freight on
680 this ore, and they declined to deliver it until the freight was adjusted; I think their agent's name was Eastman, and he came in my room, in which Mr. Garrison was with me at that time, and he said, "Here is quite an amount of money due me for freights, and that must be settled before we can deliver any more ore." Mr. Garrison said to him, "I will see that those freights are paid; you can send your bills to Dr. Smith;" I think that was his name; he was treasurer of the Wabash road at St. Louis; we have an account with the Wabash in which they are owing us.

(Objected to by counsel for plaintiff.)

Mr. WILLARD: It bears on the question of the intervening claim by the Wabash Company, and perhaps it is just as well that it should come out now.

The COURT: I think if Mr. Potter is going to be here we had better defer that until we take up that intervening claim.

Mr. WILLARD: What arrangement, Mr. Potter, if any, did you make with the St. Louis Ore and Steel Company with reference to the sale and delivery of ore to your company after Cherrie's failure and before the appointment of a receiver for the St. Louis company?

A. They substantially took up, I believe, Mr. Cherrie's contract, and carried it out just in accordance with his contract, the same terms and conditions.

Q. Was that the understanding between you and him that they should do that?

A. Between the St. Louis Ore and Steel Company and ourselves, yes, sir.

The COURT: Isn't that all shown by the correspondence?

Mr. WILLARD: No, your honor, I think not.

Q. When was that understanding and agreement arrived at?

681 Mr. HUTCHINSON: I think he had better state what was said, and not what the understanding and agreement was.

The COURT: This rail contract, Mr. Potter, provides if you remember, that you were to deliver 18,000 tons of steel rails and so

forth in about equal quantities during the months of January, February and so on through the year 1884?

A. Yes, sir.

The COURT: I want to inquire whether the quantity which was contemplated by the contract for the month of July was delivered and received by the St. Louis company?

A. I will not pretend to answer that for I don't know in detail whether it was all delivered or not, but our books will answer that question. I don't remember in my own mind now.

The COURT: I would like to have some one who is conversant with the facts about that, state?

A. I will have that done on Monday morning.

The further hearing of the case was then adjourned until Monday, January 11—at 10.45 a. m.

MONDAY, *January* 11, 1886.

Court met, pursuant to adjournment, at 10 o'clock a. m., when the redirect examination of O. W. POTTER was resumed by Mr. WILLARD as follows:

Q. Mr. Potter, you stated, I believe, in answer to some cross-interrogatories, that your mills, or one of them, shut down in consequence of the failure to take the rails under this contract; what time did the mill thus shut down?

A. It shut down in November, I think it was, the first of November.

Q. How long did it continue closed?

A. We were idle from November, I think, until April.

682 Q. Notwithstanding that if you had, during the month of December, received orders for the completion of the contract, that is, the furnishing of the balance of the rails, were you in a situation to do so?

A. We were.

Q. What was the condition of the rail market from July to December, 1884, with reference to supply and demand for No. 1 Bessemer steel rails?

A. The supply exceeded the demand; there was an unsettled and a declining market.

Q. You may state whether or not the damage resulting to the mills in consequence of failure to make these rails, or the failure on the part of the St. Louis company to receive them, did not grow out of a lack of opportunity on your part to use the material which had been furnished.

(Objected to as leading.)

Q. I will ask you generally, Mr. Potter, what was the source of the damage which resulted to the mills on that contract; was it with respect to the materials which you had on hand out of which these rails were to be made?

A. Our estimate as shown, I think, will be that it is entirely from the material on hand, and nothing else.

Q. You stated something in regard to the receipt of some material after Mr. Cherrie's failure and before July 21st; you may state whether that was furnished to you by an arrangement between you and the St. Louis people, and when.

A. I believe it was arranged between——

Mr. BEALE: When it was furnished, or when the arrangement was made?

Mr. WILLARD: Both.

Mr. BEALE: I have no objection to it.

683 The COURT: You may answer the question.

The WITNESS: It was an arrangement between Mr. Garrison, I believe, and myself in our office in this city. I think it was either the 4th or 5th of July, after Mr. Cherrie's failure, in which Mr. Garrison said they would furnish the ore at the same terms and conditions that Mr. Cherrie had been furnishing it.

The COURT: That was the 4th or 5th?

A. I believe it was the 4th or 5th of July; yes, sir.

Mr. WILLARD: Mr. Potter, here is a letter from Hitchcock to yourself, under date of August 2d; I want to ask a question with reference to it.

The letter last above referred to was then read as follows, to wit:

O. W. Potter, Esq., president.

DEAR SIR: Referring to my letter of yesterday's date, I now beg to say that Col. Talmage has not yet returned to the city, and I understand will not return until to-morrow, and I cannot therefore report any progress as to the matter of the Wabash rails.

Referring also to the last paragraph of the same letter: I am just in receipt of your telegram of this date, but regret to inform you that Dr. Smith, the treasurer of the Missouri Pacific, has just sent a reply to my note to him of yesterday, in which he states that he can make no promise relative to paying bills for steel rails, until he is satisfied that certain claims which he assumes he has against the ore and steel company will be paid. As matters now stand, therefore, it is impossible for me at present to guarantee a fixed date for payment for such rails as you may roll under our contract; and I would therefore ask you to state what you are willing to do

684 under the circumstances, my desire being, of course, to carry out the contract with you, under the orders of the court.

Did you ever ask or demand from the ore and steel company any guaranty of payment other than is contained in the written contract?

A. We did not, and that was only for the purpose of getting from them a reasonable expectation on their part that they would carry the contract out; we asked no guaranty.

Q. Was there any unwillingness on your part to trust the ore and steel company, as provided in the contract itself?

A. At no time, and if Mr. Hitchcock had said to us that the contract would have been carried out, we should have delivered the rails upon simply that expression from him.

Q. Were you aware—you were of course—of the failure of the St. Louis Company to pay on the 10th or 15th of July for the June deliveries?

A. Yes, sir; I believe that was their first default in payment; and the rails delivered in June are yet unsettled for.

Q. On the 14th of July, Mr. Potter, Mr. Hannah wired Mr. Garrison as follows: "Mr. Potter has your letter of the 12th inst. He prefers a personal interview with yourself and Mr. Hitchcock. When could you see him here?"

That letter, your honor, of the 12th, has not been read in evidence, and I desire to read it in evidence and to ask Mr. Potter with regard to it.

The letter last above referred to was then read in evidence as follows, to wit:

685 O. W. Potter, Esq., president.

DEAR SIR: With the large amount of money that we have tied up, and slow collections from some of our friends, it may be inconvenient for us to respond promptly for any debts that we may incur, and the object of this is to ask you if you would be willing to make, for the receivers of the Wabash, 2,000 tons of 63-pound rails during the present month; or, if this is more than you can get out, then 1,000 tons, and bill direct to them at a price that we might direct you to charge, and pay us the difference above what you charge our company, or the profit that we have in the business. Should we hear from you that you do not care to do this we will apply to other parties, but we first prefer to let you make the rails. If you do not care to make them would you be willing to cancel that much of your contract with our company? I don't think there is any question about the payment promptly by the receivers from this time forward, and we will arrange with them to take the rails promptly, and pay you on the tenth of the month, if the arrangement above referred to can be made. As we want to decide promptly in this matter, won't you kindly telegraph us your views?

"We have said to the Missouri Pacific Railway Company that until they are in a position to pay cash for their rails we will make no further deliveries to them. This will probably curtail the shipments through the months of July and August, for their treasurer tells me it will be fully the first of September before they are prepared to pay their accounts promptly."

Mr. Potter, do you remember of an interview with Mr. Garrison, pursuant to this correspondence—do you remember of one being had, and whether anything came from it?

686 A. I cannot say that I remember a specific interview pursuant to that letter. I know when it was written, however; it was simply to get some confirmation that these people could carry out their agreement. That is all.

Q. Here is a letter dated July 11 from Mr. Hitchcock to Mr. Potter.

The letter last above referred to was thereupon read in evidence, as follows, viz:

O. W. Potter, Esq., president.

DEAR SIR: During Mr. Garrison's recent visit to your city he explained to you the situation we were in regarding a large amount of money due us by Cherrie & Co., and also funds that for the present appear to be within our reach, for ore delivered you during the month of June. These amounts, and other amounts which should be paid us promptly, and have not been, have somewhat inconvenienced us, and we were not enabled to send you a remittance, as we would have done to-day for your June rail account. And I ask you, as a special favor, if you will not let the matter rest for a little while? You have in your possession funds of ours from pig metal shipped you; also, the July ore that is arriving, which is, of course, for account of our company. We dislike very much to have to make this request, but it is unavoidable just now. Some of our railroad friends here now are delaying settlements, else we should not have been obliged to make the above request of you.

Yours truly, E. A. HITCHCOCK.

Mr. BEALE: That is after the assignment of Cherrie?

Mr. WILLARD: Yes.

687 Cross-examination by Mr. HUTCHINSON:

Q. You say your mill was idle from November to April 1, I think?

A. Yes, sir.

Q. What was the usual output of your mill per month?

A. From ten to fifteen thousand tons at South Chicago, and about the same amount at North Chicago.

Q. The amount of the steel rails not received by the St. Louis Ore and Steel Company was ten or eleven thousand tons, I think, you stated?

A. That was it, I believe; yes, sir.

Q. Then, that would have hardly kept you running a month, would it?

A. Practically a month, by running light; it would not have kept us running full.

Q. It would not have kept you running full?

A. No, sir.

Q. So that your mills were not idle all of that time in consequence of the non-receipt of this ten or eleven thousand tons?

A. Not from November until April; no, sir. Practically for November.

Q. Did you deliver all the rails, or were you prepared to deliver in the month of July all the rails that contract called for and that were ordered?

A. Yes, sir.

Q. Were those rails in accordance with agreement; in accordance with the templet required by the contract?

A. Yes, sir.

Q. Wasn't there some difficulty in regard to the receipt of the rails, in consequence of their not being according to contract?

688 A. There was a difference in the contract over some 500 tons for the Wabash road—we were asked if we could deliver in a hurry a stipulated amount of rails, and we said yes, and they told us to go on and roll them, and we did so; we rolled them just such rails as we had made previously for the Wabash railway. Their inspector then came on after, I think, some two hundred tons had been made, two hundred and sixty, on the Missouri and Pacific templet, and said they were not in accordance with the Missouri Pacific templet, and he could not take them; we stopped rolling at once, and the Wabash road, after a reduction of two dollars a ton, decided to take them.

Q. But that was the fact, wasn't it, that there was a variation from the contract with reference to the form of the rails?

A. I should say, no.

Q. I think that is admitted in the correspondence.

A. It was precisely what we had delivered, and yet, the question arose after a part of them had been made. Then, we stopped at once until the question was settled.

Q. Don't you recollect saying something of this kind, in one of your letters to Mr. Garrison, or Hitchcock, that the Wabash officers themselves, could not detect the difference 500 yards away?

A. I don't know, I may have said so.

Q. There was some difference, then?

A. Yes, sir.

Q. And you were obliged to make a reduction of two dollars and a half a ton?

A. Two dollars, I think it was, or carry the rails, yes, sir.

689 Recross-examination.

Mr. BEALE:

Q. In the direct examination, Mr. Potter, Mr. Willard asked you whether you were accustomed to manufacture rails in advance of having contracts to which you responded that you were not generally; and then he asked you the further question whether you did not provide material for manufacturing rails in accordance with the contracts that you had for manufacturing rails; to which you responded that you did. Now, I don't understand just what you mean by saying there that you obtained material in accordance with your rail contracts. Do you mean by that that you provide the material for the filling of those contracts?

A. I mean this, that the great bulk of our material, for iron ore, if you please, comes to us from the Lake Superior district; we have to get it here during the summer months; otherwise we should simply run during the summer, or not at all, and we provide material. For instance, you may take it the first of November, 1885, we

had more than one-half of our 1886 contracts made, and we are buying material now for 1886 and 1887 contracts.

Q. But you did not mean that your rail contracts contained anything, necessarily, with regard to the materials that you should use in filling them?

A. No, sir; they did not stipulate the material; no, sir.

Q. In answer to another question by Mr. Willard, I believe, you explained that by reason of the failure of the St. Louis Ore and Steel Company you had to cast the metal into pigs, and let it stand at South Chicago, by which there was a loss when you came to recast, or an expense rather?

A. Yes, sir; remelting it.

690 Q. I would like to have you explain why it was necessary to do that by reason of the failure of the St. Louis Ore and Steel Company?

A. Simply that—our plant at South Chicago is what we call a direct process, in which the metal is taken from the blast furnaces in a molten condition and carried to the converting works, and there converted into steel and the ingots are taken from the converting works to the rail mill, and there rolled into rails. If we have no orders for rails, the rail mill is idle. If the rail mill is idle, the converting works are idle; if the converting works are idle, the pig metal, instead of being worked up in its molten condition, is cast into pigs and allowed, of course, to get cold, and is then piled up in the yard; then in order to remanufacture that metal, it has to be remelted, got into a molten condition, then taken to the converting department, and we had some four thousand tons of pig metal that was made by reason of our not having work to do; and that was the work that we had under the contract with the St. Louis Ore and Steel Company, and we stopped as soon as we could consistently, in which the entire plant had to be stopped or be put—or we would have to make pig metal of everything that came from the blast furnaces.

Q. Could you not have stopped before putting the metal into the blast furnaces at all?

A. Yes, sir; but I think if we had done that our measure of damage would have been very much greater than the one that is now presented to them.

Q. That is exactly the point I want to get at. I understand your answer to be, you put the metal into the blast furnaces largely to keep the blast furnaces running?

A. The ore is put into the blast furnaces, yes.

691 Q. The ore is put in there?

A. Yes, sir.

Q. So that is what you mean by saying that on account of the failure of the St. Louis Ore and Steel Company you had to recast and remelt the iron?

A. Yes, we could not work — as it came direct from the furnaces, and it cost us that much extra to rework it afterwards.

Q. But you received notice of the failure of the St. Louis Ore and

Steel Company, did you not, sufficiently early so that you need not have changed the form of the ore at all?

A. No, sir, we received no notice, practically, of their failure, until their contract had expired; and when their contract had expired, our blast furnaces were stopped.

Q. What do you mean by their contract—the contract with Cherrie for ore?

A. No, sir, our contract with them for rails.

Q. You mean until they had abandoned the contract, or until they committed a breach of it?

A. Until it had expired by limitation.

The COURT: In December, 1884?

A. Yes, sir; we held that in November, had they called upon us to have delivered all of those rails, they were at liberty to call upon us to do it; they had not notified us to the contrary directly that they had no contract with us.

Mr. BEALE: But you were aware of the appointment of the receiver?

A. Yes, sir.

Q. For the company at St. Louis?

A. Yes, sir.

Q. And how soon after the actual appointment of a receiver
692 were you informed of it, to the best of your present recollection?

A. Oh, I should think very promptly.

Q. Within a day?

A. Within a day or two, yes, sir.

Q. Have you any idea now how much of this ore had been then melted?

A. No, sir, I cannot tell you. I cannot answer that.

Q. It may be true, may it not, that a large part of this ore that was run into pig metal and allowed to cool, and then afterwards remelted and used for other rails, may have been melted after you became informed of the appointment of the receiver?

A. That would be a question entirely of reference to our books. We can determine all of that in that way.

Q. You could not tell?

A. No, sir; I could not state it here.

Q. You could not state it was not melted after that date?

A. I would not answer the question in that way, for I could not answer it intelligently.

Q. At the time of the appointment of a receiver had you purchased all the materials necessary for the completion of the contract to manufacture rails?

A. I should say, yes.

Q. You think you would not have been compelled to purchase any more ore?

A. I should think not.

Q. Didn't Mr. Hitchcock come here and confer with you within a day or two after his appointment as receiver?

A. I won't pretend to answer that; Mr. Hitchcock was here two or three times.

693 Q. I ask that on account of there being, according to my recollection at this moment, some intimation to that effect in the correspondence here.

A. I think that refers to the letter that Mr. Willard has just read, in which he asked about an appointment. I think they were here, but I would not pretend to be explicit as to what transpired there; I don't remember.

Q. You did have an opportunity to confer with him here not long after his appointment as receiver, did you not?

A. I believe so, yes.

Q. And at that time wasn't this rail contract one of the subjects of conversation between you?

A. I won't pretend to answer it, for I don't remember that it was.

Q. You stated Saturday, I believe, Mr. Potter that you always kept your company in condition to carry out this contract and manufacture the rails?

A. Yes, sir.

Q. And so retained these materials for that purpose instead of making efforts to dispose of them otherwise?

A. I don't think I said that.

Q. I don't intend to misquote you, that is substantially as I understood, that you always kept yourself in condition?

A. We had material on hand at all times during the life of the contract to have filled it at any time.

Q. And took pains to be prepared to fill it?

A. I don't know that we took special pains; we were prepared—yes, we took special pains that we were in a position to fill it at any time they might ask for the delivery of the rails.

694 Q. I understand you to testify that was your special reason for not disposing of some of the material, that if you had done so, you might afterwards be called upon to fill that contract, and you wanted to be ready to fill it if called for?

A. By reason of our contracting for this quantity of rails our works were practically filled for that year, and if we had assumed that the St. Louis Ore and Steel Company were not going to take these rails, and had contracted with you or with this court, it would have put us in a position so that if they did want their rails we could not have made them.

Q. Did you not know that you were not bound to carry out a contract with an insolvent?

A. No, sir, I did not.

Q. You consider yourself bound to fill that contract at any time they should call for it?

A. And say they could pay us for their rails, yes, sir.

Q. Mr. Potter, so far as you know, could you have disposed of any of this material, ore or pig metal, other than the manufacture of it into rails?

A. I should say, no, sir.

Q. There was really no market for it, was there?

A. Practically, none.

Q. So far as you know, was there everything done by your company that was possible and practicable to lessen the damage which would, or might, result to the company from the failure to carry out the rail contract?

A. There was certainly nothing to increase it, no, sir.

Q. Do you know of anything that could have been done, that was not done, that would have made it less than it now is?

A. No, sir; to make it less than it now is.

695 Mr. WILLARD: Mr. Potter, you were asked whether you had not stated at one time with reference to the slight discrepancy between the form of rails manufactured for the Wabash on that 500 July order, and the templet which had been furnished. I call your attention to this letter, dated July 31, to Mr. Hitchcock:

Counsel reads said letter as follows, to wit:

"MY DEAR SIR: Relative to the Wabash steel, we stopped rolling for a road very much in want of rails, to make these for the Wabash, and we have this 280 tons on hand. The difference between the rails that we have made and the Missouri Pacific templet is so slight that the railway officers themselves could not tell the difference fifty feet away. These rails are drilled unlike anything we have to deliver here, and it is a great injustice to us if we are not permitted to ship these rails. I hope you will see to it that there is no question about it, and oblige.

(Signed) O. W. POTTER."

Q. You may remember now having written such a letter. I find such an one here. Is that true as you understand it?

A. Yes, sir.

The COURT: Mr. Potter, you have stated that the rails delivered in June, and the payments which I take it, were due on the 10th of July, under the contract, were unsettled for?

A. Yes, sir, I understand they are still unsettled for.

Q. Those rails were all delivered, were they, all received by the St. Louis company?

A. Yes, sir.

Q. The June rails?

A. That is as I understand it, yes.

696 Q. How is it with reference to the July installment, payment for which would be due on the 10th of August?

A. I think they were not delivered on account of this question coming up as to their inability to pay for them.

Q. The July rails were not——

A. As I understand it the July installment was not delivered, no, sir.

Q. Did the failure of the St. Louis company to receive that July installment enter into your claim here against the St. Louis company?

A. I think it is a part of the undelivered steel, a part of the ten thousand tons that was not delivered?

Q. And the remainder were rails due when?

A. They were to be equal amounts; monthly, I believe, your honor; something like 1,500 tons per month we were to make, being some $40,000 a month, that would have been their indebtedness to us.

Q. How late would your whole claim come down?

A. I think that carried us until December. That is the delivery; it went through the entire year.

Q. So that your claim for damages on account of rails not received, includes the whole year?

A. Yes, sir, I think our contract was for deliveries in equal amounts, monthly, 1,500 tons a month commencing in January. That would have taken us through the entire year of 1884, for the 18,000 tons.

Q. The point I wanted to get at was whether your claim included undelivered rails down to the end of the year, whether it also included any of the July installments?

A. It would have included all that were not delivered during the year. I think there were 7,500 or 8,000 tons delivered, and some 10,000 that were not delivered. It is for the entire rails that were not delivered.

697 Q. Your first formal notification to the St. Louis company of the claim that you might make for damages, as I understand it, was in the form of that letter of August 6th, was it?

A. I don't remember that there was anything before that, no, sir.

Mr. HUTCHINSON: I understand you to say that the June deliveries of rails had not been paid for; they had been paid for in some way, hadn't they, by the shipment of ore and pig metal? In the statement of account between the parties it appears there is over $16,000 due the St. Louis Ore and Steel Company, leaving out this claim for damages. Now you must have taken out enough to pay for those and given us credit for the balance, so that they practically had been paid for.

A. I suppose when this suit is adjusted it determines whether they are paid for or not. I think that we have money in our hands, as stated by Mr. Hitchcock from which he expects us to pay ourselves.

Q. The statement of accounts here, as shown by your answer, pays for those rails?

A. Yes, sir.

Q. Leaving a balance due of $16,000?

Mr. WILLARD: I beg to differ with you. It shows a balance the other way.

Mr. HUTCHINSON: There is $16,000 admitted due the St. Louis Ore and Steel Company?

A. Which I believe we do not admit.

Mr. WILLARD: No, sir.

Mr. HUTCHINSON: Taking out the claim for unliquidated damages there is that amount due.

The COURT: Suppose you throw out entirely this claim about

which you are contending of damages for the breach of the contract, how does it stand then?

698 A. I should think then we would be owing this company.

Mr. BEALE: Their answer puts it in this way: that striking out their claim for damages they would owe the St. Louis Ore and Steel Company $44,000 practically, while the St. Louis Ore and Steel Company would owe them $28,000. I think that is about what it comes to. But they do not admit there has been any adjustment or settlement or arrangement made, so that they have taken the money themselves as a credit.

The COURT: I think we understand that.

Mr. HUTCHINSON: The answer states the balance due.

The COURT: Yes, I think I understand it.

Mr. WILLARD: Right on that point; the ore and pig metal delivered after Cherrie's failure, and before the 21st, was under the arrangement non-payable until August, was it?

A. The 15th day of the month following the month of the delivery.

Q. That would be the 15th day of August?

A. Yes, sir, the payment would not be due until then by the arrangement.

Q. Do you know when the ore and steel company sent their account for that—sent their invoice?

A. I cannot answer that from memory.

J. C. PARKES, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. WILLARD, and testified as follows:

Q. Mr. Parks, you are superintendent and general manager of the North Chicago Rolling Mill Company?

A. Yes, sir.

Q. And have been such general manager for how many years?

699 A. I think about four or five years.

Q. Do you know whether the rolling mill company manufactured any sixty-three-pound steel rails for the Missouri Pacific railway in December 1883, or prior to that time?

A. My impression is we did, but I would not want to say positively without reference to our books for that purpose.

Q. Was a templet furnished to you for that manufacture?

A. Yes, sir.

Q. Was there any other templet ever furnished to you subsequently for that kind?

A. No, sir.

Q. Was it in accordance with that templet that the 280 tons of the 500 tons parcel was made?

A. Practically so, yes.

Q. Do you remember the order of the Wabash which was sent to your company through the St. Louis company for that manufacture in 1884?

A. It was an order from the St. Louis company to make such rails for the Wabash company.

Q. The St. Louis company furnished you a formal order, did they not?

A. Yes, sir.

Q. A formal request for that manufacture?

A. Yes, sir.

Q. See if you recognize those as being the orders (handing the papers to witness)?

A. Yes, sir, 500 tons; 400 tons to one place and 100 to another destination, and 100 to another destination; shipping instructions.

Q. Those are the formal orders?

700 A. Those are the formal orders from the St. Louis Ore and Steel Company.

Counsel for defendant, The North Chicago Rolling Mill Company, offered in evidence the papers dated July 29, 1884, and the same were received in evidence as follows, to wit: (Here insert.)

Mr. WILLARD: The point is, they make no specification as to a particular templet.

The COURT: How many tons are those orders?

A. 500 tons.

Q. That is, 500 tons was subsequently made, or 240 of the 500?

A. 240 of this order was made—260.

Mr. WILLARD: There are two orders, one for 400 and one for 100 tons.

Q. This was of the 500 lot which you were to manufacture for the Wabash, payable by the St. Louis company on the 13th of the month following, instead of on the 10th?

A. Yes, sir; by some special arrangement made with some of our people about that, I don't know about that.

Q. Do you know whether any of this same pattern was made by the North Chicago under the contract with the St. Louis company, this 18,000 ton contract?

A. Yes, you have read letters before the court showing that we had made rails similar to those before that.

Q. Then I understand you had received this templet—or rather the rails which you manufactured prior to those manufactured under this 18,000-ton contract, were from a templet then or theretofore received by you?

A. Yes, sir.

Q. And that subsequently under this 18,000-ton contract, you made still others of the same kind?

701 A. Yes, sir.

Q. And those were received and accepted without question?

A. Yes, sir.

Q. Had you any knowledge or belief that the 280 tons made under this order of July 29th, would not be entirely acceptable?

A. No, sir.

(Objected to by counsel for plaintiff.)

The COURT: If he had any notice or knowledge it is competent.

Mr. WILLARD: Yes; you had not?

A. No, sir.

Q. Was it or not under your general supervision that the rails under the different contracts of the North Chicago company were manufactured and delivered?

A. Yes, sir.

Q. Did you at any time withhold intentionally or otherwise, the filling of the orders given to this company under this 18,000-ton contract?

A. No, sir.

Q. Do you remember any correspondence between your company and the St. Louis people with respect to a willingness on the part of the North Chicago to make the balance of the 500 tons July 29th order, to conform exactly to their wishes as expressed after the 280 tons were made?

A. Yes, sir.

Q. And did you at any time receive from them a request to make the balance of them so as to conform exactly to that?

A. Not to my knowledge; I have not seen anything of that kind.

702 Q. If there had been any such request you would probably have known of it, would you?

A. I think I should, yes, sir.

Cross-examination waived.

JAMES K. WALDEN, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. WILLARD, and testified as follows:

Q. You are the accountant and book-keeper for the North Chicago Rolling Mill Company?

A. Yes, sir.

Q. And have been during how many years?

A. Five or six or seven.

Q. What is the general nature of your duties as such accountant?

A. To keep the accounts of the company with parties from whom they purchase material, and sell rails, and so forth.

Q. Can you state when the St. Louis Ore and Steel Company first rendered to the North Chicago Rolling Mill Company its account, or invoice, for ore and pig metal delivered between July 4 and July 21, 1884; do you remember when it was?

A. We received the account about November 1, 1884.

Q. Have you the letter or communication which accompanied it?

A. Yes, sir; I have the account.

Q. Will you produce it, please?

A. (Witness produces paper.)

Q. This is it, is it, Mr. Walden?
A. Yes, sir.

Counsel for defendant, The North Chicago Rolling Mill Company, offered in evidence letter and statement of account
703 from O. L. Garrison, agent for the receiver, to R. C. Hannah, Esq., secretary North Chicago Rolling Mill Company, under date of October 31, 1884, and the same was read in evidence as follows, viz:

(*Letter.*)

R. C. Hannah, Esq., secretary North Chicago Rolling Mill Company.

DEAR SIR: We enclose you statement of our account with your company asked for, showing a balance due us of $14,098.07. This statement is rendered subject to the approval of the United States circuit court for the eastern district of Missouri. We are obliged to make this condition for the reason that an opposing creditor claims we have no right to allow offsets. His position our attorney does not think well taken, however, and the receiver is now contesting his claim. I would also say, for your information, that the master in chancery has overruled the objection. There is no question but that the court will sustain the master, but it is deemed best we should make the condition above referred to until the account has been finally passed on by the court, the receiver feeling that it is necessary for his own protection to take that ground.

Account. (Here insert.)

(Counsel for plaintiff objected to the evidence as far as it might have any bearing upon the Wabash claim for freight in any way; that account being rendered after this suit was begun, and allowing the claim of $2,900 to the Wabash receiver as a credit.)

Mr. HUTCHINSON: That explains the difference, your honor,
704 between the $16,000 and that amount, the claim of the Wabash for freight. They deduct that in that account.

Mr. WILLARD: I do not introduce this as affecting in any way the claim of the Wabash for freight either one way or the other. I offer in evidence the account dated October 31st, in connection with the other.

The COURT: I suppose the receivers are making their claim on the strength of alleged liens.

Mr. BEALE: Substantially.

The COURT: A lien which they say ought — have preference of your garnishment? That may be read without prejudice to any rights in the matter.

Mr. WILLARD: Do you know of any formal statement of account being rendered to the St. Louis Steel Company by the North Chicago Rolling Mill Company?

A. Yes, we rendered them an account for the steel rails shipped to them July 2d; that is, steel rails that are still unpaid for.

Q. Is that the copy of the account? (Handing paper to witness.)

A. That is a copy of the account, yes, sir.

Counsel for the defendant The North Chicago Rolling Mill Company, offered the paper in evidence and the same was received and read as follows:

(Here insert.)

Q. Do you know of any account being rendered to the St. Louis company subsequent to this one of July 6th?

A. I do not.

Q. You don't know of any other?

A. No, sir, that is I don't remember of any.

Q. Have you an account which was made up in your office in respect to that; I think you showed me one the other day.

705 A. I have a copy of one; there have been several copies made, I haven't it with me; I guess I have it at the office.

(Counsel for plaintiff objected to any account made up at the office of the witness which was not submitted to the St. Louis company.)

The COURT: I suppose that would hardly be proof of any fact?

Mr. WILLARD: It might have a bearing. I do not insist upon it.

Q. Mr. Walden, did you make up a statement of account which was embodied in the company's answer in this garnishee case?

A. Yes, sir.

Q. That reads as follows: St. Louis Ore and Steel Company to North Chicago Rolling Mill Company. Damages for non-receipt of steel rails $28,390.16. Steel rails delivered and not paid for, $21,536.50. Freight paid for account St. Louis Ore and Steel Company, $6,322.21. Is that correct?

A. Yes, sir.

Q. And shortage on ore, $458.66. Is that correct?

A. A shortage in the percentage of metallic iron.

Mr. BEALE: Those two items are fully admitted by everybody here, I think.

Mr. WILLARD: Those items are correct with reference to the freight and the shortage on the ore?

A. Yes, sir.

Q. And the amount of the rails you had previously rendered?

A. Yes, sir.

Q. And the amount of damages—who furnished you that item?

706 A. That was made up in the office by some one; I found it on the book.

Q. And contra the St. Louis company is given credit by iron ore for $27,110.90. That is correct, is it, as you understand it?

A. Yes, sir; that is my recollection of it.

Q. And by pig metal, $17,805.92?

A. Yes, sir.

Q. Leaving a balance in favor of the North Chicago of $11,790.77?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir; $11,790.77.

Cross-examination by Mr. BEALE:

Q. How many tons of rails were furnished the St. Louis Ore and Steel Company in the month of June, 1884?
A. Six hundred and fifteen tons and a fraction.
Q. In the month of June?
A. Yes, sir; that is my recollection.
Q. How many were furnished during the month of July?
A. I don't think there were any rails furnished during July.
Q. You don't think there were any furnished during July?
A. No.
Q. How many were furnished during August to the company or its receiver?
A. Two hundred and sixty-seven tons, I think it is.
Q. That used up all the rails that were rolled?
A. That I could not answer.
707 Q. Were there any afterwards furnished?
A. I think those were the last that were furnished on that contract.
Q. When were those 267 tons rolled?
A. I don't know when they were rolled; they were shipped.
Q. In August?
A. I don't know when they were rolled.
Q. I didn't quite understand your last answer. They were shipped in August, were they not?
A. They were shipped in August.

Counsel for defendant, The North Chicago Rolling Mill Company, offered, and the court received in evidence, a bill for shortage, as follows, to wit:
(Here insert.)

Mr. WILLARD: This question of freight, your honor, I understand, is not pertinent to this issue.
The COURT: That will come in hereafter.
Mr. WILLARD: With that understanding that is our case, your honor.

Which was all the evidence introduced by the defendant garnishee.

And thereupon the plaintiff moved to strike out the evidence aforesaid, and to render judgment against the said garnishee, The North Chicago Rolling Mill Company, upon its answers in said cause filed disallowing its claim for damages for non-receipt of rails, which motion the court allowed, and thereupon struck out all the evidence aforesaid, and after correction by agreement of some admitted minor errors of account, rendered judgment against said garnishee for the sum of $16,473.28 for the use of said plaintiff and others entitled to share therein.

To which said ruling allowing said motion and striking
708 out said evidence, and rendering said judgment the said North Chicago Rolling Mill Company by its counsel then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record, the defendant garnishee renders this its bill of exceptions, and prays that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made, which is accordingly done,

(Signed) CHAS. E. DYER, *Judge.* [SEAL.]

JUNE 5, 1886.

Examined and believed to be correct, and it is agreed that when Judge Dyer is in Chicago he may approve as of any date within the time originally given.

ISHAM & LINCOLN,
Att'ys for Joliet Steel Co.
WILLARD & DRIGGS,
Att'ys for Def't Garnishee.

709 *Addenda.*

Instrument of assignment of judgments as follows:

This indenture, made the ninth day of April, one thousand eight hundred and eighty-seven, between the Joliet Steel Company, of the first part, and D. K. Ferguson, of the second part, witnesseth:

Whereas, the said party of the first part, on the fifth day of February, one thousand eight hundred and eighty-six, recovered a judgment in the circuit court of the United States for the northern district of Illinois against the St. Louis Ore & Steel Company, for ten thousand and fifty-one $\frac{78}{100}$ dollars and costs of suit, as will by the record thereof more fully appear.

Now this indenture witnesseth, that the said party of the first part, in consideration of nine thousand three hundred and ninety-eight $\frac{15}{100}$ dollars, to it duly paid, before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath sold, assigned, transferred and set over, and by these presents doth sell, assign, transfer and set over, unto the said party of the second part and his assigns, the said judgment and any and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon.

And the said party of the first part doth hereby constitute and appoint the said party of the second part, and his executors, administrators and assigns, its true and lawful attorney, irrevoca-

710 ble, with power of substitution and revocation, for it and in its name, and in the name and names of its successors, but for the sole use and benefit of the said party of the second part, and at his own costs and charges, to ask, demand and receive, and to sue out executions and other writs, and take all lawful ways for the recovery of the money due, or to become due, on the said judgment, and on payment to acknowledge satisfaction or discharge the same; and attorneys, one or more, under him for the purpose aforesaid, to make and substitute, and the same at pleasure again to revoke, hereby ratifying and confirming all that its said attorney or substitute shall lawfully do in the premises.

And the said party of the first part doth covenant that there is now due on the said judgment the sum of nine thousand three hundred and ninety-eight $\frac{15}{100}$ dollars, and that it will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises.

In testimony whereof the party of the first — has caused these presents to be signed by its treasurer and secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

Sealed and delivered in presence of:

W. R. STIRLING, *Treas.* [SEAL.]
J. C. STIRLING, *Sec'y.* [SEAL.]

[Seal of Joliet Steel Company.]

This indenture, made the ninth day of April, one thousand eight hundred and eighty-seven, between the Joliet Steel Company of the first part, and D. K. Ferguson of the second part:

711 Witnesseth, whereas, the said party of the first part, on the seventh day of January, one thousand eight hundred and eighty-six, recovered a judgment in the circuit court of the United States, for the northern district of Illinois, against The St. Louis Ore and Steel Company for eight thousand four hundred and sixty-six $\frac{64}{100}$ dollars, and costs of suit, as will by the record thereof more fully appear.

Now this indenture witnesseth, that the said party of the first part, in consideration of nine thousand one hundred and one and $\frac{85}{100}$ dollars, to it duly paid, before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath sold, assigned, transferred, and set over, and, by these presents, doth sell, assign, transfer, and set over unto the said party of the second part, and his assigns, the said judgment, and any and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon.

And the said party of the first part, doth hereby constitute and appoint the said party of the second part, and his executors, administrators, and assigns, its true and lawful attorney, irrevocable, with power of substitution and revocation, for it and — its name, and in the name and names of its successors, but for the sole use and benefit of the said party of the second part, and at its own costs and charges, to ask, demand, and receive, and to sue out executions and other writs, and take all lawful ways for the recovery of the money due, or to become due, on the said judgment, and, on payment, to acknowledge satisfaction, or discharge the same: And attorneys, one or more, under him for the purpose aforesaid, to make and sub-

712 stitute, and the same, at pleasure, again to revoke: hereby ratifying and confirming all that its said attorney, or substitute, shall lawfully do in the premises.

And the said party of the first part doth covenant, that there is now due on the said judgment, the sum of nine thousand one hundred and one and *one* $\frac{85}{100}$ dollars, and that it will not collect or re-

ceive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises.

In testimony whereof the party of the first part has caused these presents to be signed by its treasurer and secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

Sealed and delivered in the presence of:

W. R. STIRLING, *Treas.* [SEAL.]
J. C. STIRLING, *Secr'y.* [SEAL.]

[Seal of Joliet Steel Company.]

Orders for the 500 tons Mo. Pacific 63-lb. rail, as follows:

St. Louis Ore and Steel Company.

ST. LOUIS, *July* 29, 1884.

North Chicago R. M. Co., gen'l sup't.

DEAR SIR: Herewith I hand you order No. 3 dated ——, 188–.
For receivers of Wabash, St. L. & Pac. R'y, contract for — tons.

Order for Rails.

	No. of tons, first quality, 400.		2d quality, ——.
	Weight per yard, pounds, 63.		Pattern, Mo. Pac. 63 lbs. standard.
713	Length of rails, feet,	30.	Short rails, 10 per cent. down to 22 feet.

To be delivered, ——.
Drilling, $2\frac{7}{8}$ & 6; holes, 1 inch; flange to center of holes, $1\frac{3}{4}$.
June delivery.

Shipping Directions.

Ship via Wabash railway.
Consigned to Wabash, St. Louis & Pacific R'y.
Care of E. N. Armstrong, Forrest, Ill.
Freight, to follow.
Remarks, ——.

Yours truly,

E. A. HITCHCOCK,
Provisional Receiver,
By O. L. GARRISON, *Ag't.*

St. Louis Ore and Steel Company.

ST. LOUIS, *July* 29, 1884.

North Chicago R. M. Co., gen'l sup't.

DEAR SIR: Herewith I hand you order No. 4, dated ——, 188–.
For receivers of Wabash, St. Louis & Pac. R'y, contract for — tons.

Order for Rails.

No. of tons, 1st quality, 100. 2d quality, ——.
Weight per yard, pounds, 63. Pattern, Mo. Pac. 63's.
Length of rails, feet, 30. Short rails, 10 per cent. down to 22 feet.

To be delivered, ——.
Drilling, 2⅞ & 6; holes 1 inch; flange to center of holes, 1¾.
June delivery.

714 *Shipping Directions.*

Ship via Wabash railway.
Consigned to Wabash, St. Louis & Pacific R'y.
Care of R. S. Miner, Moberly, Mo.
Freight, to follow.
Remarks, ——.
Yours truly,

E. A. HITCHCOCK,
Provisional Receiver,
By O. L. GARRISON, *Ag't.*

Declarations filed July 25, 1884, in the State court by the Joliet Steel Company in its two attachment suits against the St. Louis Ore and Steel Company as follows:

In the Superior Court of Cook County, July Term, A. D. 1884.

STATE OF ILLINOIS, } ss:
Cook County, }

Case No. 92701.

The Joliet Steel Company, a corporation, plaintiff in this suit, by Isham, Lincoln, Burry and Ryerson, attorneys, complains of the St. Louis Ore and Steel Company, a corporation, defendant in this suit, etc., of a plea of trespass on the case on promises.

For that whereas, the said defendant, heretofore, to wit: on the nineteenth day of July in the year of our Lord one thousand eight hundred and eighty-four, at Chicago, to wit: at the county aforesaid, became and was indebted to the said plaintiff in the sum of seven thousand seven hundred and seventy-seven $\frac{7}{100}$ dollars, of lawful money of the United States of America, for:

715	Goods, wares and merchandise, sold and delivered	$7,777 07
	Money lent and advanced	7,777 07
	Money paid, laid out and expended	7,777 07
	Money had and received, to and for the use of said plaintiff	7,777 07
	Money due for interest and forbearance	7,777 07
	Labor, services, and material	7,777 07
	Balance due on account stated	7,777 07

Nevertheless, the said defendant (although often requested, etc.,) has not yet paid the said several sums of money above mentioned,

or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff, of seven thousand seven hundred and seventy-seven and $\frac{7}{100}$ dollars, and therefore the said plaintiff brings suit, etc.

ISHAM, LINCOLN, BURRY & RYERSON,
Plaintiff's Attorneys.

In the Superior Court of Cook County, July Term, A. D. 1884.

STATE OF ILLINOIS, } ss.:
Cook County, }

Case No. 92702.

The Joliet Steel Company, a corporation, plaintiff in this suit, by Isham, Lincoln, Burry and Ryerson, its attorneys, complains of The St. Louis Ore and Steel Company, defendant in this suit, summoned, etc., of a plea of trespass, on the case on premises.

716 For that whereas the said defendant, heretofore, to wit: on the nineteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, at Chicago, to wit: at the county aforesaid, became and was indebted to the said plaintiff in the sum of ten thousand fifty and $\frac{78}{100}$ dollars of lawful money of the United States of America, for:

Goods, wares, and merchandise, sold and delivered	$10,050 78
Money lent and advanced	10,050 78
Money paid, laid out, and expended	10,050 78
Money had and received, to and for the use of said plaintiff	10,050 78
Money due for interest and forbearance	10,050 78
Labor, services, and material	10,050 78
Balance due on account stated	10,050 78

Nevertheless, the said defendant (although often requested, etc.,) has not yet paid the several sums of money above mentioned, or any of either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of ten thousand fifty and $\frac{78}{100}$ dollars, and therefore the said plaintiff brings suit, etc.

ISHAM, LINCOLN, BURRY AND RYERSON,
Plaintiff's Attorneys.

717 Plea of the St. Louis Ore and Steel Company in case 92701, filed August 16, 1884, as follows:

In the Superior Court of Cook County, of the August Term, A. D. 1884.

ST. LOUIS ORE AND STEEL COMPANY *ads.* JOLIET STEEL COMPANY. } 92701.

And the said defendant, by Hutchinson & Luff, its attorneys, comes and defends the wrong and injury when, etc., and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, etc.

HUTCHINSON & LUFF,
Def't's Att'ys.

Plea of the St. Louis Ore and Steel Company, filed August 16, 1884, in case No. 92702, as follows:

In the Superior Court of Cook County, of the August Term, A. D. 1884.

ST. LOUIS ORE AND STEEL COMPANY *ads.* JOLIET STEEL COMPANY. } 92702.

And the said defendant, by Hutchinson & Luff, its attorneys, comes and defends the wrong and injury when, etc., and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, etc.

HUTCHINSON & LUFF,
Def't's Att'ys.

718 UNITED STATES OF AMERICA, *Eastern Division of the Eastern Judicial District of Missouri,* } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the twelfth day of October, A. D. 1886, there was filed in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, a certain master's report, in words and figures following, to wit:

UNITED STATES OF AMERICA, *Eastern District of Missouri*, } ss:

In the Circuit Court of the United States in and for the Eastern District of Missouri.

ROBERT M. OLYPHANT and THE Farmers' Loan and Trust Company of New York, Complainants, *vs.* THE ST. LOUIS ORE AND STEEL COMPANY *et al.*, Defendants. } In Equity. Nos. 2394 & 2507. Consolidated Cause.

To the honorable judges of the United States circuit court for the eastern district of Missouri:

Pursuant to an order of reference, made by this honorable
719 court, on the 24th day of March, A. D. 1886, the undersigned special master gave written notice April 13, 1886, more than five days previous to the hearing, to the solicitors of all parties to this consolidated cause, that a hearing, under said order of reference, would be had at the office of E. A. Hitchcock, the receiver of the St. Louis Ore and Steel Company, on the 20th day of April, 1886, at 11 o'clock a. m.

This notice was sent to E. T. Allen, Esq., solicitor for R. M. Olyphant; to Messrs. Dyer, Lee & Ellis, solicitors for the St. Louis Ore and Steel Company; to Messrs. Hough, Overall & Judson, solicitors for the Farmers' Loan and Trust Company; to Messrs. Noble and Orrick, solicitors for Charles P. Chouteau *et al.*, creditors, and for R. J. Lackland and T. B. Edgar, trustees; and to Messrs. Hitchcock, Madill & Finkelnburg, solicitors for E. A. Hitchcock, the receiver.

At 11 o'clock a. m. on Tuesday, the 20th day of April, 1886, the undersigned special master was present at the office of E. A. Hitchcock, the receiver, to hear the evidence under said order, also after that date, I was present at the appointed places and times, to hear evidence relating to the matters referred to in said order; at which times and places the solicitors for the parties named in said order, with others appeared before me; and proceedings were had from time to time, as is fully set out and stated in the record of proceedings under said order, herewith filed and referred to as a part of this report.

720 I.

Bonds of the Vulcan Iron Works.

1. I find from the evidence introduced before me, that on the 24th day of May, 1875, the Vulcan iron works, a corporation created and organized under the laws of the State of Missouri, issued one thousand bonds, each for the sum of $1,000, due and payable on the 15th day of April, 1885, bearing ten per cent. per annum, interest payable on the 15th day of April and October, for each year until maturity; for which interest coupons were attached to said

bonds, which when paid were to be in full of interest, thereon, to their maturity.

These bonds were secured by a deed of trust in the nature of a mortgage on the land of said corporation and the buildings and improvements erected thereon and occupied as a rail mill and furnaces in connection therewith, and also upon the machinery, apparatus, fixtures and appurtenances, then and thereafter in, or used in said buildings and premises in carrying on its business; as fully appears in Exhibit "A," filed with the bill of complaint in the suit of R. M. Olyphant against the St. Louis Ore and Steel Company and here referred to as a part of this report.

A complete list of the outstanding bonds, issued by the Vulcan iron works May 24, 1875, all of which are secured by the deed of trust filed as Exhibit "A" to the bill of complaint in the suit of R. M. Oliphant *v.* The St. Louis Ore and Steel Company *et al.*, has been prepared by O. L. Garrison, heretofore secretary of the Vulcan iron works, and now agent for the receiver, which shows a record of the Vulcan iron works bonds and the holders thereof; also a
721 statement of accrued interest on the principal and past-due coupons to April 15, 1886, which is hereto annexed and marked Exhibit "1" and made a part of this report.

I find from the evidence before me that the total amount of the Vulcan iron works bonds so outstanding, is shown by Exhibit No. "1" to be one thousand bonds for the sum of one thousand dollars principal; and that coupons on same to the number of 2,083 have matured and remain unpaid. The unpaid coupons on said bonds, amount of each being $35, matured as follows:

83	matured	April 15, 1884	$2,905
1,000	"	October 15, 1884	35,000
1,000	"	April 15, 1885	35,000
		Face value of matured coupons	$72,905

The bonds themselves matured on April 15, 1885, and therefore there are no further coupons maturing after that date. The total amount of interest accrued up to and on the 15th day of April, 1886, on matured unpaid coupons is $7,757, making due on matured coupons unpaid on April 15, 1886, a total amount of $80,662. Up to that date a year's interest has accrued on the past-due bonds at the rate of seven per cent. per annum, amounting to the sum of $70,000, so that there was due on the 15th of April, 1886, of principal and interest of this series of bonds the sum of $1,150,662. The daily increment of interest upon the principal and matured coupons outstanding and unpaid on this series of bonds is $223.73. The names of the present owners of said bonds and coupons so far as I have been able to ascertain them, are listed in alphabetical order upon Exhibit No. "1." Of the eighty-three past-due coupons, maturing April 15, 1884, forty-four (44) are held by the estate of R.
722 Sellew; thirty-two (32) by the Iron Mountain Company; five (5) by R. W. Hunt; and two (2) by some party unknown to the officers and agents of the company. The principal of this series

of bonds payable in new bonds as per agreement for reorganization amounts to $1,000,000
Interest payable in income bonds as per ditto 150,662

Total amount of Vulcan bonds and interest $1,150,662

2. I find from the evidence before me that there were issued by the St. Louis Ore and Steel Company one thousand bonds, each for the sum of $1,000, dated May 3, 1882, and secured by a deed of trust made by the St. Louis Ore and Steel Company on the 3d day of May, 1882, a copy of which is filed with the original bill of complaint in the case of R. M. Olyphant *v.* The St. Louis Ore and Steel Company *et al.*, and marked Exhibit "B," and is here referred to as a part of this report. There were no coupons annexed to these bonds, the interest thereon being payable semi-annually on the 1st day of May and November in each year. All interest due on these bonds up to May 1, 1884, has been paid. The amount of semi-annual interest which has accrued on these bonds and which has not been paid since May 1, 1884, up to April 15, 1886, amount to the sum of % $137,083 25
Interest due on unpaid semi-annual interest installments up to April 15, 1886 ..... 7,247 00

Making a total of interest due $144,330 25

The total amount of principal and interest due on these bonds up to April 15, 1886, is $1,144,330.25. The daily increment of interest upon the principal and upon the matured unpaid installments of interest upon this series of bonds will be the sum of $222.50.

A carefully prepared list, giving the names of the present
723 owners and holders of these bonds in alphabetical order, showing the principal and interest on past-due semi-annual payments to April 15, 1886, is herewith filed as part of this report and marked Exhibit No. "2," showing a total amount of principal of bonds payable in new bonds as per agreement of.. $1,000,000
Interest payable in income bonds 144,330 25

Making a total of $1,144,330 25

I find from the evidence before me that this series of bonds and the interest thereon are secured by a deed of trust in the nature of a mortgage, duly made and entered into on the 3d day of May, 1882, by and between the St. Louis Ore and Steel Company, party of the first part, and the Farmers' Loan and Trust Company, a corporation doing business in the city of New York and State of New York, organized under the laws of said State, party of the second part, conveying to said Farmers' Loan and Trust Company, as trustee, the lands and property of the St. Louis Ore and Steel Company, in the State of Missouri, except those situated in the city of St. Louis, by it acquired from and formerly belonging to the Pilot Knob Iron Company; and also the lands and tenements situate in Jackson county, in the State of Illinois, acquired from David Dows and wife

and Le Grand B. Cannon, formerly belonging to the Grand Tower Mining, Manufacturing and Transportation Company; and also two certain tracts in the city of St. Louis, Missouri, formerly belonging to the Vulcan Steel Company, being the same two tracts mentioned and described in a certain mortgage deed of trust dated May 24, 1875, from the Vulcan iron works to Lackland and Edgar, trustees, recorded in Book 545, page 142, in the office of the re-
724 corder of deeds of the city of St. Louis, Missouri, and intended to secure certain bonds issued by the Vulcan iron works, which became due and payable April 15, 1885, a description of all of which is fully set forth in Exhibit "B," filed with the bill of complaint, in the suit of R. M. Olyphant complainant, *v.* The St. Louis Ore and Steel Company *et al.*, and is here referred to for a more particular description thereof.

Bonds of the Grand Tower and Carbondale Railroad Company.

3. I find from the evidence before me that the Grand Tower and Carbondale Railroad Company, a corporation duly organized under the laws of the State of Illinois, issued 500 bonds of the par value of $1,000 each, and 200 bonds of the par value of $500, making a total of 700 bonds of the par value of $600,000, dated October 1, 1883, with coupons attached for the interest thereon at the rate of seven per cent. per annum, which became due semi-annually, on the 1st of April and October of each year; none of these coupons have been paid.

A carefully prepared list of these bonds, with the names of the owners thereof, arranged in alphabetical order, is herewith filed as Exhibit No. "3," and made a part of this report. The past-due coupons on this series of bonds amount to $106,749. The interest on the unpaid coupons up to April 15, 1886, amounts to $7,656.25.

The total amount of interest and principal due on this series of bonds on the 15th of April, 1886, is $714,405.25.

The daily increment of interest on this series of bonds is $138.91.

These bonds are secured by a deed of trust, in the nature of
725 a mortgage, made and entered into by the Grand Tower and Carbondale Railroad Company, a corporation duly created and organized under the laws of the State of Illinois, of the first part; and Henry Hitchcock, of St. Louis, Missouri, and Robert M. Olyphant, of the city of New York, trustees, of the second part, are dated the 1st day of October, 1883, filed with the original bill of complaint in the case of R. M. Olyphant *v.* The St. Louis Ore & Steel Company *et al.*, and marked Exhibit "C," conveying to said parties of the second part, as trustees, and to the survivor of them in said trust, all the estate, right, title and interest of said party of the first part, in and to all the railroad buildings, franchises, plant, telegraph lines, rolling stock, steamboats, barges, flats, and also all stock fixtures and other property then belonging to, or thereafter to be acquired or held by said party of the first part, in Jackson county, Illinois, to be held by said parties of the second part, and the sur-

vivor of them in trust, for the equal *pro rata* benefit and security of all persons or corporations who may become owners and holders of any of the above-mentioned bonds, a complete description of which premises, rights, interests, franchises, and property is given in said deed of trust, filed with the original bill of complaint in said case of R. M. Olyphant *v.* The St. Louis Ore & Steel Company *et al.*, and marked Exhibit "C," and is here referred to as part of this report.

The said statement, giving a list of the Grand Tower and Carbondale railroad bonds, and the names of the present holders thereof, together with the interest due on the principal and past-due coupons, up to April 15, 1886, shows the principal due on this series of bonds payable in new bonds, as per agreement, to be $600,000, and the interest payable in income bonds, as per agreement, to be $114,405.25, up to April 15, 1886.

726 It further appears, from the evidence, that this last series of bonds were guaranteed by a deed of trust made by the St. Louis Ore and Steel Company, of the first part, dated May 1, 1884, conveying to Robert M. Olyphant, of New York, and Henry Hitchcock, of St. Louis, as trustees, parties of the second part: (1.) All the lands before that time belonging to the Pilot Knob Iron Company, and by it transferred to the St. Louis Ore and Steel Company, by the articles of consolidation and association thereof; situate in the State of Missouri, elsewhere than in the city of St. Louis, to wit, in the counties of Jefferson, Madison, St. Francois and Iron, together with all the ores and minerals in said lands, and all mines and mining works in progress; all blast and other furnaces; buildings, constructions, fixtures, tramways, railways and other improvements thereon. (2.) Also, all those lands and tenements situated in the county of Jackson and State of Illinois, formerly belonging to the Grand Tower Mining, Manufacturing and Transportation Company, being the same lands acquired by the St. Louis Ore and Steel Company from David Dows and wife and Le Grand B. Cannon, by deed dated March 25, 1882, for the benefit of the holders of said series of bonds, respectively; the same being a second mortgage or deed of trust, subject to the lien of the mortgage deed of trust executed by said St. Louis Ore and Steel Company to the Farmers' Loan and Trust Company, of New York, dated May 3, 1882; a complete description of which lands and tenements, and other property above mentioned, is given in said deed of trust, filed with and made a part of the original bill of complaint in said case of R. M. Olyphant *v.* The St. Louis Ore and Steel Company *et al.*, and marked Exhibit "D," and is here referred to as a part of this report.

727 It also appears from the evidence that the payment of this series of bonds and interest thereon, last above mentioned was guaranteed by the St. Louis Ore and Steel Company, pursuant to resolutions adopted by the board of directors of said company, on the 2d day of November, A. D. 1883, by an agreement in writing, endorsed on each of said bonds, in consideration of which 700 bonds were delivered to said ore and steel company, to be negotiated and

used for the benefit thereof; which agreement and guaranty by said ore and steel company was approved by the shareholders thereof.

Recapitulation of Bonded Indebtedness Secured by Mortgages and Deeds of Trust and Interest Due to April 15, 1886.

1.

Bonds of the Vulcan iron works and interest matured to April 15, 1886	$1,150,662
Daily increment of interest	223 73

2.

Bonds of St. Louis Ore and Steel Company and interest to April 15, 1886	$1,144,330 25
Daily increment of interest	222 50

3.

Bonds of Grand Tower and Carbondale Railroad Co.—interest to April 15, 1886	$714,405 25
Daily increment of interest	138 91

It appears from the evidence that the foregoing and above-mentioned obligations comprise all the bonds and coupons now outstanding and heretofore issued by the several corporations mentioned in the original bill of complaint, and the cross-bills
728 filed in this cause; and that no other sums of money are due, which were intended to be secured by any mortgage, deed of trust, or other instrument executed by said corporations respectively.

The property covered by the mortgage of May 24, 1875, made by the Vulcan iron works to Lackland and Edgar, is more particularly described in a schedule herewith returned and marked Exhibit No. "5," and referred to as a part of this report. This schedule was made at the time said property was leased under the order of this court to A. M. Wilcox and others, and for which the lessees under that instrument receipted at the date of the lease. Exhibit No. "5" is a true and correct statement of the property covered by the mortgage of May 24, 1885, in detail.

The other personal property, machinery, tools, implements, apparatus, fixtures and appurtenances, embraced within the provisions of the above-mentioned mortgage and deeds of trust and subject to sale according to the provisions thereof, are sufficiently set forth and described in said instruments, and therefore are not specifically enumerated and described here.

It further appears from the testimony that the St. Louis Ore and Steel Company, created by articles of consolidation, a certified copy of which was filed in the office of the secretary of state on the 7th day of January, 1882, assumed the indebtedness evidenced by the bonds, secured by the above-mentioned mortgages; which articles of consolidation are filed with the cross-bill of Lackland and Edgar in the suit of R. M. Olyphant and the Farmers' Loan and Trust

Company of New York against the St. Louis Ore and Steel Company, as Exhibit "C," and are herewith referred to as a part of this report. These articles of consolidation were filed for record
729 in the city of St. Louis, January 4, 1882, and in the counties of Iron, Madison, Jefferson and St. Francois, in the State of Missouri, soon thereafter. By the terms of said articles of consolidation, it is stipulated in article 16 that:

The property, assets and franchises hereby transferred of the Vulcan Steel Company, first party to said articles, are valued at and taken by the consolidated company thereby formed, viz: The St. Louis Ore and Steel Company at $1,164,000; and the said consolidated company also assumes and agrees to pay the mortgage debt of ($1,000,000) one million dollars, and interest thereon, secured by the mortgage, filed as Exhibit "A," to R. J. Lackland and T. B. Edgar, trustees, and the like property, assets and franchises of the Pilot Knob Company, the second party to said articles, are taken and valued at $1,473,000, for which the said St. Louis Ore and Steel Company, thereby formed, is to make payment to said parties respectively by the issue of its full-paid stock at par, to be delivered *pro rata* to the stockholders of the said companies upon the surrender of the certificates held by them for the capital stock of said several parties.

It further appears from the evidence that a composition agreement of creditors, bondholders and stockholders of the Vulcan iron works was made and entered into on the 5th of November, 1877, whereby it was agreed, that by reason of the fact that the Vulcan iron works has sold and assigned to the Bessemer Steel Company, Limited, all its right, title and interest in and to various patents, which are necessary to the successful working of said iron works in the manufacture of steel rails; by reason of which grave doubts have arisen as to whether the purchaser, under the sale of the property covered by the existing mortgage, would acquire any rights to the
730 patents so assigned as aforesaid; and if not, that the value of the bonds secured by said mortgage is greatly impaired and imperiled; and it having been further considered that a supplemental instrument, with power to sell the interest of said Vulcan iron works in the said Bessemer Steel Company, Limited, so that the same would inure to the benefit of said bonds, would greatly strengthen the same and give them additional value. The parties who were holders of bonds of said Vulcan iron works, secured by the mortgage or deed of trust dated the 24th of May, 1875, whereby the Vulcan iron works conveyed to Rufus J. Lackland and T. B. Edgar, trustees, certain property to secure the payment of 1,000 bonds af $1,000 each, bearing date the 24th day of May, 1875, bearing interest at the rate of ten per cent. per annum, payable semi-annually, whose signatures appear to said composition agreement, thereby agreed that upon the taking effect of the arrengement in said agreement provided for, they would reduce the interest upon the bonds severally held by them to the rate of seven per cent. per annum, in consideration of which the Vulcan iron works agreed on its part to cause to be made and delivered to the trustees, R. J. Lack-

land and T. B. Edgar, in said mortgage dated May 24, 1875, an instrument or power of attorney, with powers of sale, covering all of its rights, titles and interest in said Bessemer Steel Company, Limited. A duly certified copy of which agreement was introduced in evidence, the original being in the hands of the trustees.

Pursuant to this agreement the said power of attorney was executed by the Vulcan iron works and delivered to Lackland and Edgar and the interest on the said bonds was reduced from ten to seven per cent. A certified copy of this power of attorney is
731 filed with the cross-bill of Lackland and Edgar as Exhibit "A" and is referred to as a part of this report.

It further appears from the evidence, that during the month of March, 1886, a settlement was had with the Bessemer Steel Company, Limited, for all past-due royalties, due the St. Louis Ore and Steel Company up to August 1, 1885, the date of the lease to the Western Steel Company; the money received from this settlement is now held by the receiver as a fund separate and apart from the other assets for the benefit of the Vulcan bondholders, and amounts to the sum of six thousand nine hundred and ninety-five dollars and eighty-four cents ($6,995.84). The above-mentioned agreements are the only instruments affecting the mortgages sought to be foreclosed in this cause, so far as the evidence introduced shows.

II.

I now proceed to state the amount and description of all other existing indebtedness of said corporation, as directed in the second paragraph of the said order of March 24, 1886.

Liabilities.

I find from the evidence before me that the existing indebtedness of said corporations, other than bonded indebtedness, consists of several classes, namely:

1. Equitable lien claims allowed by the United States circuit court.
2. Vouchers and pay-rolls due, and receiver's accounts.
3. Lien and other claims not passed by the court.
732 4. General judgment claims.
7. Bills payable.

Each of these several classes will be taken up in its order.

1. A carefully prepared list of the equitable lien claims allowed by this court prior to April 15, 1886, giving the names of the owners of said claims and the amounts of principal and interest due thereon up to April 15, 1886, is filed with and made a part of an "approximate statement of the condition of the St. Louis Ore and Steel Company," returned herewith, and marked Exhibit No. "4," and made part of this report.

EXHIBIT "G."

Said list of equitable liens allowed by the court is marked Exhibit "G" to said Exhibit No. 4, and shows that the balance due on said equitable lien claims, including interest up to and on April 15, 1886, amounts to the sum of $35,217.96. These claims have been allowed by this court, and given a priority over the second mortgage of the St. Louis Ore and Steel Company. Sixty per cent. of these claims, as originally allowed, have been heretofore paid under the order of this court, by the receiver.

Exhibit "H," filed with said Exhibit No. 4, gives a statement of liabilities and receiver's accounts, and shows accounts payable for supplies for operating the several departments of the coal and ore mines, up to April 1, 1886, to be $8,119.51. Pay-rolls up to April 1, 1886, $17,039.52; amount due to Shafer, Nichols & Miller, on contract for the erection of a bridge and laying a track to the coal shaft, $675.79; total liabilities, as specified in Exhibit "H,"
733 $25,834.82. Shafer, Nichols & Miller have filed an intervening petition in the circuit court of the United States for the southern district of Illinois, in the suit of R. M. Olyphant *v.* The St. Louis Ore & Steel Co. *et al.*, in which they claim a balance due them of $3,756.60, which is still pending.

Exhibit "I," filed with said Exhibit No. "4," is a statement of claims not yet passed on by the court, showing the amount of principal claimed in each case; also interest calculated up to April 15, 1886, as follows, to wit:

	Prin.	Interest.
Missouri Pacific Railway Co. Am't of claim	$23,343 12	$2,443 29
Wabash, St. L. & Pac. R'y Co.	11,570 32	1,211 02
Boatmen's bank	15,097 52	1,580 20
Mechanics' bank	9,004 90	942 43
Merchants' National bank	10,000 00	1,046 67
Joliet Steel Company	7,777 07	814 00
Total principal	$76,792 93	$8,037 61
Interest	8,037 61	
Total principal and int.	$84,830 54	

It appears from the evidence that the claim of the Missouri Pacific Railway Company for $23,343.12, accrued $9,000 prior to the receivership, and about $14,000 subsequent thereto, and is the amount due said company, as shown by the books of the ore and steel company; but that the Missouri Pacific Railway Company owes the receiver of the St. Louis Ore and Steel Company on business accrued since the receivership, about $14,000, as above stated, which is included in the list of assets of the receivership. The claim of the Wabash, St. Louis and Pacific Railway Company for
734 $11,570.32 also accrued prior to the receivership. To this

claim there is an offset of about $4,000, which is embraced in the statement of the assets of the receivership.

The claim of the Boatmen's bank for $15,097.52 is on a draft made by the ore and steel company on Cherrie & Co., held by the Boatmen's bank; the original face of this draft was $17,500, on which the Boatmen's savings bank placed a credit of $2,402.48, being the balance which remained to the credit of the St. Louis Ore and Steel Company at the Boatmen's bank at the date of the appointment of the receiver, July 21, 1884. There is no security for this draft except the acceptance of Cherrie & Co.

The claim of the Mechanics' bank for $9,004.90 is also on a draft of the St. Louis Ore and Steel Company on Cherrie & Co. for $10,000, on which the Mechanics' bank placed a credit of $995.10, being a balance in that bank to the credit of the ore and steel company on July 21, 1884, the day of the appointment of the receiver. There is no security for this draft except the acceptance of Cherrie & Co., and no offset to it.

The claim of the Merchants' National bank for $10,000, is based on a draft of the St. Louis Ore and Steel Company on Messrs. Cherrie & Co., and accepted by them. There is no other security for this draft than the acceptance of Cherrie & Co.

The claim of the Joliet Steel Company is a balance due that company for rails purchased by the St. Louis Ore and Steel Company. To this claim there is no offset. The Joliet Steel Company have attached funds in the hands of the North Chicago Rolling Mill Company, due the ore and steel company, which appear in the list of assets in the hands of the receiver. This attachment suit is still pending.

735 Exhibit "J," filed with Exhibit No. "4," is a statement of other liabilities and general judgments rendered against the St. Louis Ore and Steel Company, and embraces the following claims:

	Principal.	Interest.
Lackawanna Iron & Coal Co.	$81,041 08	$8,482 30
Grand Tower M. M. & T. Co.	20,831 81	2,180 39
Jupiter iron works	50,577 79	5,293 80
Iron Mountain Company	19,577 25	2,049 08
L. M. Rumsey M'f'g Co.	337 46	35 32
B. Zwart	26 00	2 72
U. S. Rolling Stock Co.	400 00	41 86
Total principal	$172,791 39	$18,085 47
Interest	18,085 47	
Total principal and interest	$190,876 86	
Add judg't of Joliet Steel Co. and interest from 5th, 1886	10,051 78	
	$200,938 64	

These several liabilities are compiled from the records of the United States circuit court in this case, with the exception of the claim of Grand Tower Mining, Manufacturing and Transportation Company for $20,831.81, which the books of the St. Louis Ore and Steel Company show to be due; this last amount has not been approved by the court or placed in the form of a judgment.

Exhibit "K," filed with said Exhibit No. 4, is a statement of the bills payable of the St. Louis Ore and Steel Company, secured by collateral, and embraces the following, viz:

Collateral.

Mechanics' bank, 1,600 tons pig-iron	$25,000 00
Do. do. 390 tons pig-iron	5,692 15
Mechanics' bank, $13,500 bonds of Grand Tower and Carbondale railroad	10,000 00
Total	$40,692 15

736 It appears from the evidence that the pig-iron pledged as collateral security for two of the above-mentioned liabilities, will fully pay the indebtedness for which it is pledged when sold.

Exhibit No. "4" contains a recapitulation of the above-mentioned liabilities, up to April 15, 1886, as follows, viz:

Total Liabilities.

"G."	Equitable lien claims	$35,217 96
"H."	Vouchers, pay-rolls and accounts	25,834 82
"I."	Lien and other claims not passed by the court	84,830 54
"J."	General judgments, etc.	190,876 86
"K."	Bills payable, secured by collateral	40,692 15
	Total indebtedness	$377,452 33
	Add Joliet Steel Co.'s judgment	10,051 78
	Total	$387,504 11

This statement embraces all the liabilities of the St. Louis Ore and Steel Company, so far as known to the receiver.

In this connection, however, it is proper to mention a series of eleven notes of the Grand Tower and Carbondale Railroad Company, executed January 2, 1884, and indorsed by the several directors of the company, which are secured by bonds of the Grand Tower and Carbondale Railroad Company. The funds raised by this series of notes were raised for the benefit of and all used by the St. Louis Ore and Steel Company, and therefore said
737 notes may be considered in effect the obligations of the ore and steel company.

The transaction out of which these obligations grew may be explained in brief as follows:

In the month of July, 1883, the St. Louis Ore and Steel Company

was needing more money than it had, for the conduct of its business, and the president of the company, Mr. E. A. Hitchcock, went to New York and laid the matter before the board of directors of the company. The money then required, about $300,000, was raised on the ore and steel company's note, endorsed by the directors of the company. This note was to fall due in January, 1884, and it was understood at the time, as a condition of its indorsement by the directors, that they should be secured by the Grand Tower and Carbondale railroad and barges and boats, which was the only considerable parcel of property that the ore and steel company had at that time which was unincumbered. But for this understanding the directors would not have endorsed the notes.

The money raised in this way was all used for the benefit of the St. Louis Ore and Steel Company, and when it became due in January, Mr. Hitchcock, as president of the company, was unable to pay it and required even further amounts of money to carry on the business of the company. In order to take up this obligation and to raise the additional amount needed to carry on the business of the St. Louis Ore and Steel Company, eleven notes of the Grand Tower and Carbondale railroad, all dated January 2, 1884, with interest payable semi-annually, from January 15, 1884, at six per cent. and payable January 15, 1885, fixed, were executed and indorsed by the St. Louis Ore and Steel Company, and the directors as follows:

738 Note to the order of and endorsed by—

Thomas Dickson	$23,000
Joseph A. Burden	23,000
R. M. Olyphant	23,000
R. S. Grant	15,000
A. M. Olmstead	10,000
L. G. B. Cannon	35,000
David Dows	35,000
A. A. Low & Bros.	15,000
A. A. Low	10,000
E. D. Morgan & Co., H. G. Marquand, C. K. Garrison	250,000
E. A. Hitchcock	50,000
Making a total of	$489,000

All these notes were duly protested and are secured by bonds of the Grand Tower and Carbondale railroad, amounting to $586,500 in all, which in the meantime had been duly executed and secured by a mortgage on the road and its equipments. The amounts of these eleven notes and the numbers and amount of the Grand Tower and Carbondale Railroad Company's first-mortgage bonds, pledged as collateral to secure the same respectively are fully set out in Exhibit No. 3, to O. L. Garrison's testimony of May 14, 1886, herewith filed and referred to as part of this report.

The money that was raised on this series of notes was used to pay off the $300,000 obligation, and the surplus went into the treasury

of the company and was used for the general operations of the ore and steel company.

The bonds of the Grand Tower and Carbondale Railroad Company, above mentioned, and which were used as collateral for
739 said eleven notes, are the bonds mentioned in the deed of trust, dated May 1, 1884, given by the St. Louis Ore and Steel Company to Robert M. Olyphant and Henry Hitchcock, as trustees, and are secured in part by the Carbondale railroad, and the personal property of same, described in Exhibit No. 5, to O. L. Garrison's testimony, of May 14, 1886. Under this state of facts, this series of eleven notes of the Grand Tower and Carbondale Railroad Company, amounting to the aggregate sum of $489,000, may be considered in this way to be embraced in the indebtedness of the St. Louis Ore and Steel Company.

III.

Assets and Property Other than That Included in Mortgages and Deeds of Trust.

The assets of the St. Louis Ore and Steel Company, on April 15, 1886, are set forth in Exhibit No. 4, as follows, in approximate statements of same, filed with said Exhibit No. "4," as Exhibits "A," "B," "C," "D," "E" and "F:"

Exhibit "A" contains cash and materials on hand April 15, 1886:

Cash in hands of O. L. Garrison, agent	$47,515 86
Cash, Bessemer royalty deposit	6,995 84
Cash in hands of W. G. Dilts, cashier	1,911 89
Cash in hands of J. D. Peters, cashier	3,191 90
Total cash	$59,615 49
Bonds, Houston city	1,449 44
Bonds, P. D. and A. R. R.	1,500 00
Stock, Union Steel Company	289 90
Ore, Jupiter and Sulphur Springs dump	2,000 00
740 Metal, Pilot Knob	2,379 27
Ferro manganese, Vulcan	1,455 11
Scrap, Vulcan	4,011 77
Ore, Pilot Knob, mined, not shipped	2,683 61
Coal, Grand Tower	2,091 51
Pilot Knob store stock, per ledger	4,459 04
Mount Carbon store stock, per ledger	4,966 45
Total cash and materials	$86,901 59

The item of cash on hand, $47,515.86, was received from the sale of ore and coal by the receiver, being a part of the earnings of the receiver. The item of cash, Bessemer royalty deposit, was received from a settlement made by the Bessemer Steel Company, Limited,

of past-due royalties due the St. Louis Ore and Steel Company, up to August 1, 1885=$6,995.84.

This amount is held by the receiver under a special order of the court regarding the Vulcan bondholders, and is subject to no charge or expense in favor of the receiver, being held for the benefit of the Vulcan bondholders alone.

The item of $1,911.89 is held by W. G. Dilts, the cashier in charge of the office of the company at Pilot Knob, Missouri, and representing money in his hands to pay freight on goods shipped for the Pilot Knob department and time checks for the pay-rolls due for March, 1886.

The item of $3,191.90 is held by J. D. Peters, who is cashier of the Grand Tower department, stationed at Carbondale, Illinois, in the same manner as above, and represents in part collections from the sale of coal to boats at the Grand Tower river landing; both of these last-named parties are in the employ of the receiver at the points above named.

741 The next item of $1,449.44 represents the present value of the Houston city bonds, held by the receiver, which are worth just what they are put down for.

The next item of $1,500 is the estimated value of bonds of the Peoria, Decatur and Atlanta railroad, held by the receiver, the face value of which is $6,000. These bonds are of doubtful value; but it appears from the evidence that they are worth twenty-five cents on the face value thereof, being $1,500.

The item of $289.90 is the actual value of stock in the Union Steel Company, to that amount, which is held by the receiver. This company is located in Chicago, and will go in operation next month. This stock was taken for a debt when the company failed some years ago.

The next item of $2,000 is the value of ore at the Jupiter and Sulphur Springs dump.

The item of $2,370.22 represents the value of pig-iron, held by the receiver, at Pilot Knob and the Vulcan works.

The item of $1,455.11 represents the value of ferro manganese, held by the receiver, at the Vulcan works.

The item of $4,011.77 is the value of scrap held by the receiver, which is fully worth that amount.

The item of $2,683.61 is the value of ore on hand at Pilot Knob, which is mined but not yet shipped.

The item of $2,091.51 is the value of coal on hand at Grand Tower, which has been mined but not yet shipped.

The item of $4,459.04 represents the value of the stock of goods on hand at the Pilot Knob store, as it existed April 1, 1886, as near as may be.

And the item of $4,966.45 represents the value of the stock on hand at the Mount Carbon store at the same date. The total

742 value of cash and materials on hand amounts to $86,901.59, and this amount appears to be a fair estimate of the value thereof.

EXHIBIT "B."

This exhibit, filed with Exhibit No. "4," is a statement of the assessed value of real property in Carondelet, owned by the company, not covered by mortgage, amounting to the sum of $25,610. This property is particularly described in the testimony of O. L. Garrison herewith filed as part of this report. The value of this property is taken from the assessor's books, and from the tax bills, making the amount $25,610.

Of this real estate not covered by mortgage the following parcels were acquired from the Vulcan Steel Company and passed to the St. Louis Ore and Steel Company by the agreement of consolidation, by which said company was formed, as will appear from said agreement on file as Exhibit "C" to the cross-bill of Lackland and Edgar, to wit:

Lots numbered 5, 6, 7, 8, 9, 10, 11 and 12, in block G, of the former town of Carondelet, Eller's survey, being in block No. 3086 of the present city of St. Louis; said lots, together, fronting two hundred (200) feet, five (5) inches on the east line of Jackson street, by one hundred thirty-seven (137) feet, eleven (11) inches in depth, eastwardly, to an alley, and together bounded, north by Vine street, east by an alley, south by lot 4 of said block, and west by Jackson street, being the same lots acquired by the Vulcan Steel Company (formerly Vulcan iron works), by deed of Charles C. Helmers and E. E. Helmers, his wife, and Daniel E. Garrison, trustee, dated
743 October 16, A. D. 1872, recorded in Book 464, page 186, in the office of the recorder of deeds of the city (formerly county) of St. Louis, and quitclaim deed of Daniel E. Garrison, dated December 8, 1877, recorded in Book 585, page 129, in recorder's office aforesaid. The assessed value of this property is $1,200.

Also, lots numbered 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85, situate and being in the east half of block 67, survey No. 3, John C. Ivory's subdivision of the city of Carondelet according to the plat of said subdivision filed in the office of the recorder of deeds of the city (formerly county) of St. Louis. Said lots, together, fronting eastwardly on Clay street, three hundred and thirty-two (332) feet, six (6) inches, and running back, westwardly, one hundred and forty (140) feet, to an alley on the west; bounded north and south by alleys adjoining lots 85 and 73, respectively, and each of said lots having a front of twenty-five (25) feet on Clay street, except lot 73, which has a front of twenty-seven and six-twelfths ($27\frac{6}{12}$) feet, and lot 85, which has a front of thirty (30) feet, being the same lots acquired by said Vulcan Steel Company (formerly Vulcan iron works), by deed to Calvin F. Burns and James Riley, dated August 21, A. D. 1871, recorded in Book 436, page 149, in recorder's office aforesaid. The assessed value of this property is $10,950.

EXHIBIT "C."

Exhibit "C," filed with said statement Exhibit No. "4" is a list of accounts due the receiver and the ore and steel company. Most of these accounts are due the receiver, but one of them, that of Carnegie Bros. Company, for $27,319.55, being due the company before the appointment of the receiver. Of this amount
744 $20,000 was attached by the Iron Mountain Company at Pittsburgh. This attachment suit was decided in favor of the St. Louis Ore and Steel Company in the lower court, but it does not appear from the testimony whether this suit has been appealed or not. It appears that, with the exception of the Carnegie Brothers & Co. account this entire list of claims, amounting to $83,393.78, is collectible. The item of $14,053.58, near the foot of Exhibit "C," is a claim of the receiver against the Missouri Pacific Railway Company, which accrued since the receivership; and is an offset against the claim of the Missouri Pacific Railway Company against the ore and steel company.

The item of $4,630.55 against the Wabash, St. Louis and Pacific Railway Company, also accrued since the receivership and is for rails sold by the receiver to the Wabash road. This account is disputed, not on account of the price of the rails sold the Wabash road, but on account of an arbitrary deduction that the Wabash road wished to make from freights agreed on. This matter is not yet adjusted.

EXHIBIT "D."

Exhibit "D," filed with said statement Exhibit No. "4" is a claim for $16,546.25 against the North Chicago Rolling Mill Company, which is still in litigation, and is the same amount mentioned as having been attached or garnished by the Joliet Steel Company. Against this claim the North Chicago Rolling Mill Company sets up a claim for $28,390.16; unliquidated damages under a contract for steel rails, and the matter is still in litigation.

EXHIBIT "E."

Exhibit "E," filed with and forming part of Exhibit No.
745 "4" is a statement of the amount admitted to be due from Messrs. Cherrie & Co. to the St. Louis Ore and Steel Company, as follows:

Account due from Cherrie & Co.	$27,523 78
Acceptance of C. & Co. held by banks	73,500 00
Note of C. & Co., help by St. L. O. & S. Co.	15,000 00
Total	$116,023 98

This full amount has been admitted by the assignee of Cherrie & Co. as due the banks holding said acceptances, and to the St. Louis Ore and Steel Company. If this amount were paid in full the banks

holding said acceptances would receive $73,500 thereof, and the St. Louis Ore and Steel Company, the balance of $42,523.98. No interest has been calculated on these accounts and nothing has been paid as yet under the assignment. From all the evidence introduced as to this indebtedness, it appears that the assets of Cherrie & Co. will pay about fifty cents on the dollar of same.

EXHIBIT "F."

Exhibit "F" filed with said statement Exhibit No. "4," is a statement of the amount of pig-iron and bonds belonging to the St. Louis Ore and Steel Company, and pledged as collateral security for a portion of its indebtedness, as follows:

Pig-iron, pledged on notes held by Mechanics' bank, 1,990 tons to same	$30,692 15
Bonds G. T. & C. R. pledged to same	10,000 00
	$40,092 15

These are the same bonds and pig-iron referred to in Exhibit "K" to said statement Exhibit No. "4."

746 An approximate statement of the total assets of the St. Louis Ore and Steel Company on April 15, 1886, is as follows:

Assets.

Exhibit.		
"A."	Cash and materials on hand	$86,901 59
"B."	Real property unincumbered, assessed value	25,610 00
"C."	Accounts collectible	83,393 78
"D."	Account North Chicago Roll. Mill Co., in litigation	16,546 25
"E."	Cherrie & Co., notes and accounts	116,023 98
"E."	Bonds and metal pledged on notes	40,692 15
	Total of assets	$369,167 75
	Deducting this amount from the total amount of liability as stated above	$377,452 33
	Approximate estimate of assets	369,167 75
	And there remains a balance of of liabilities in excess of the assets of the company. This deficiency, however, must be further increased by adding to it fifty per cent. of the Cherrie indebtedness, which will most probably not be paid, say one-half of $116,023.98	$8,284 58 $58,011 99 8,284 58
	Making a deficiency of, say	$66,296 57

other than bonds and interest secured, which must be provided for in some way.

747 IV.

In response to that portion of the order of reference of March 24, 1886, directing the master to inquire into and state the particulars of any agreement which may have been entered into by any of the creditors of said corporation, or either of them, in respect to the adjustment or settlement of their demands, the parties to any such agreement, and what steps, if any, have been taken thereunder, the undersigned, special master, respectfully reports, that it appears from the evidence that an agreement for reorganization has been drawn up and entered into by and between the holders of bonds secured by the deeds of trust on the property now owned by the St. Louis Ore and Steel Company, and designated:

1st. As a deed of trust made by the Vulcan iron works to Rufus J. Lackland and Timothy B. Edgar, dated May 24, 1875, conveying, and a first lien upon, the Vulcan iron works property, to secure one million dollars and interest at seven per cent.

2d. A deed of trust made by the St. Louis Ore and Steel Company to the Farmers' Loan and Trust Company, dated May 3, 1882, conveying, and a first lien upon, the Pilot Knob property and the coal lands, and a second lien upon the Vulcan property, to secure one million dollars and interest at seven per cent.

3d. A deed of trust made by the Grand Tower and Carbondale Railroad Company, dated October 1, 1883, to R. M. Olyphant and Henry Hitchcock, conveying, and a first lien upon, the railroad and property of said company, to secure six hundred thousand dollars, with seven per cent. interest, the bonds for which are guar-
748 anteed by said St. Louis Ore and Steel Company, and said guaranty secured by a deed of trust made by said last-named company to said Olyphant and Hitchcock, dated May 14, 1884, conveying, and a second lien on the Pilot Knob property and the coal lands.

This agreement was made for the purpose of reorganization, and in compromise of all existing differences and claims between the holders of said bonds; and provides in substance:

1st. That the existing deeds of trust or mortgages, or as many of them as may be necessary, shall be foreclosed, or duly enforced according to their terms; so as to vest, at the earliest period practicable, the unincumbered title to all the different properties therein mentioned in a new corporation or corporations to be created for that purpose and to utilize said properties.

2d. That in lieu of the present bonds and mortgages held by said bondholders, they shall have and will accept bonds and securities from the new company (all to be at thirty years and to bear six per cent. interest, payable semi-annually), as follows:

A. The Vulcan bondholders shall have 1,000 bonds for $1,000 each, secured by first lien by deed of trust upon the Vulcan iron works property, as now existing, and as the same may hereafter be; also, to extent of $500,000 and interest, or one-half of each bond and interest, further secured by a second lien or incumbrance on Pilot Knob property, to be of same rank, and share said second

lien with $600,000 of bonds of the new company, which are to be given for the present Grand Tower and Carbondale Railroad Company's bonds, so that one set of said bonds shall have six-eleven and the other five-eleven of said second lien security.

749 And said Vulcan bondholders shall further have any security there may be from the pledge of all income received or receivable from the interest now held by the St. Louis Ore and Steel Company in the Bessemer steel process, or that may be owned by said new company, or by any person for either company.

B. The holders of the bonds of the Grand Tower and Carbondale Railroad Company, guaranteed as aforesaid, and said guaranty secured as stated, shall have a first lien on the railroad property, a second lien on the coal lands, and a second lien on the Pilot Knob property, as to said last property to be of same rank and share said second lien with $500,000 and interest of the bonds of the new company to be given to the present Vulcan bondholders, as aforesaid; and the holders of not less than two hundred and fifty (250) of any of said bonds mentioned in this agreement, and to be secured by a second deed of trust, or lien on the Pilot Knob property may require the trustee therein to foreclose the same upon default of payment of interest on bonds, after two years from date of said deed of trust.

C. The holders of the bonds of St. Louis Ore and Steel Company, for one million dollars, shall have a first lien on Pilot Knob property and the coal lands, and a second lien on the Vulcan property, as at present.

3d. All interest coupons accrued and unpaid, also the coupon next to mature on either set of said bonds now existing, shall be funded in income bonds of the new company, payable at thirty years or before, at option of the new company, with interest at six per cent. per annum, payable annually, principal and interest payable only out of surplus of earnings after paying all interest, taxes and expenses; all such surplus earnings to be applied annually:

750 first, to the payment of interest on said income bond; and second, if there be more of such surplus earnings than sufficient to pay such interest, at least fifty per centum of such excess shall be used to retire an equivalent amount of said income bonds, the bonds so retired to be determined by lot. It being further understood and agreed that no dividend shall be declared upon the stock of the new corporation until all of said income bonds shall have been redeemed or otherwise provided for.

4th. All said new securities shall provide that the same shall not be sued on or the encumbrances enforced for any default that may accrue from non-payment of interest or non-performance of agreements therein contained within two years from date of said securities.

5th. The new securities shall, moreover, be subject to any lease of the Vulcan property existing at the time this agreement may take effect, and also subject to any contracts then existing for sale of ore.

6th. All the claims allowed by the court, as six months' labor or supply claims, in suits now pending, shall be paid from funds in hands of receiver upon sale of the property by any proceedings, in

court or out of it, as herein contemplated, and if said fund is not sufficient the stockholders who assent to this agreement by signing the same, promise to pay not to exceed, for any one, two dollars a share on the shares by him held, as a fund to pay such labor or supply claims as then remain unpaid, and any expenses of said suit, as far as said fund may go.

7th. All other and unsecured creditors of said St. Louis Ore and Steel Company, who shall consent to the terms hereof, and to receive same, shall, by signing this agreement on or before January 15, 1886, be entitled to have, to amount due, income bonds of
751 said new company of the terms and conditions, the same as those to be given for matured and unpaid interest, as hereinbefore set forth.

8th. This agreement, to be effective and enforcible, must receive the signatures to this, or a copy, of at least five-eighths in value of each class of all said bondholders, either directly or by agent or agents duly authorized, and all, to extent aforesaid, on or before the 1st day of January, 1886. Creditors and stockholders may sign after the 1st day of January, 1886, but shall not receive the benefits thereof unless signing on or before the 15th day of said month of January.

9th. The stockholders signing shall be entitled to a number of shares in the new company, equal to their shares in the present company; those shareholders not signing shall not be entitled to any shares in the new company. But the whole capital stock of the new company shall be equal to that of the present company, and the stock to which the old stockholders shall not be entitled as herein provided shall belong to the new company and be disposed of as its directors may determine.

10th. The bondholders hereby authorize and direct their respective trustees in said several deeds of trust now existing and hereinbefore mentioned, or such of said trustees in each deed as may be willing to act, or in case of their refusal, then their substitutes, to act in harmony and unison with each other to carry into effect the terms and purposes hereof, and to that end to accept all service, appear, plead, consent and agree, exercise all powers, do all acts and execute all obligations that they shall find legal and necessary. And said trustees may, under them, appoint attorneys and solicitors, with like powers to carry this agreement into effect.
752 And the courts in which the suit of R. M. Olyphant *v.* The St. Louis Ore and Steel Company is now pending, or any other courts before which any proceeding may be instituted to effect the terms of this agreement, are requested and authorized, so far as our consent can give authority and power, to make all orders and decrees and do all acts necessary to carry this agreement into effect.

11th. And we, said bondholders, hereby constitute and appoint Joseph W. Branch, William L. Huse and Cyrus B. Burnham, to act for us as a purchasing committee to carry out the purposes of this agreement, with power to accept the resignation of any of their own number, fill vacancies in the committee, and in their discretion to appoint any agent or agents, and such appointments to revoke from

time to time, and to designate one or more of themselves to sign on their behalf all instruments in writing requiring their signatures; and the decision of a majority of said committee shall be deemed the decision of the committee. And we further agree that as soon as we are notified by said committee that this agreement has taken effect, by having received the signatures necessary as aforesaid, we will forward immediately our several bonds to said committee with power to so use and appropriate the same as to obtain for us the new obligations and securities hereinbefore agreed upon; and we further agree that said committee shall receive a reasonable compensation for their services, to be fixed by the court in which the foreclosure proceedings are now pending, and may deduct the same and all necessary expenses incurred by them in the execution of their duties, from any moneys or funds coming to their hands by virtue of these presents.

12th. And it is hereby further agreed that, in the organi-
753 zation of the new company, it shall be provided, if it can be legally effected, that each bondholder shall have a voting power in said new company for each one hundred dollars, at par value, of his bond or bonds, equal to a share of stock at its par value.

The committee designated in said agreement, composed of Messrs. C. B. Burnham, J. W. Branch and W. L. Huse, organized by making C. B. Burnham chairman and James P. Foster secretary, who gave receipts for all bonds sent in under said agreement, and entered the names of the owners and numbers of the bonds sent in, in a book kept for that purpose.

Ore and Steel Company Bonds.

James P. Foster, secretary of said committee, stated, in giving his evidence, and the master finds, as matter of fact, that said committee have received and receipted for nine hundred and ninety-three bonds issued by the St. Louis Ore and Steel Company, from the holders of said bonds, leaving seven bonds still in the hands of parties in New York and abroad. A complete list, giving the names of the holders of all of the bonds of the St. Louis Ore and Steel Company who have signed the agreement, and the number of bonds held by each, made out and annexed to the form of the reorganization agreement, was offered and admitted in evidence, and is herewith filed, marked Exhibit No. "6," and referred to as a part of this report. This list gives the names of the holders of the one thousand bonds of the St. Louis Ore and Steel Company, of one thousand dollars each, arranged in alphabetical order. It appears from this list that the reorganization agreement has been signed by all the
754 holders of the St. Louis Ore and Steel Company bonds. Nine hundred and ninety-three of those bonds have been sent to and received by the committee of reorganization, leaving seven in the hands of parties in New York and abroad.

Vulcan Bonds.

A copy of the reorganization agreement, with the names of the holders of the Vulcan bonds who have signed said agreement, and the numbers of the bonds held by each was offered and admitted in evidence, and is herewith filed, marked Exhibit No. 7, and referred to as a part of this report. From this paper it appears that the signatures of the holders of nine hundred and seventy-four of these bonds have been made to this agreement. It appears, however, from the evidence, and the master finds, as matter of fact, that the said committee have received nine hundred and ninety-four of the Vulcan bonds and have that number in their possession; the difference being that some of the holders of these bonds, although they have not signed the agreement, have turned in and delivered their bonds to the committee of reorganization. This leaves six of the Vulcan bonds outstanding. Two of these bonds cannot be located; the other four are located and the holder known.

Bonds of the Grand Tower and Carbondale Railroad Company.

A copy of the reorganization agreement, with a complete list of the holders of the Grand Tower and Carbondale Railroad bonds, secured by the Olyphant mortgage, all of whom have signed the said agreement, giving the number of bonds held by each of said
755 holders, was offered and admitted in evidence, and is herewith filed, marked Exhibit No. "8," and referred to as a part of this report. From this it appears that all of the holders of the Grand Tower and Carbondale Railroad bonds have signed the agreement for reorganization.

Stockholders of the St. Louis Ore and Steel Company Who Have Signed the Reorganization Agreement.

It appears from the evidence, and the master finds, as matter of fact, that the holders of 33,671 shares of the St. Louis Ore and Steel Company have signed the reorganization agreement. A complete list of the stockholders in the St. Louis Ore and Steel Company who have signed said agreement, arranged in alphabetical order, was offered and admitted in evidence, and is herewith filed as Exhibit No. "9," and referred to as part of this report. This list gives the name of each stockholder who signed, and the number of shares held by each one so signing.

It appears from the evidence that a few of these stockholders signed said agreement after the 15th of January, 1886, namely:

Nicholas Brown, holding	26	shares.
—— Tilden, "	58	"
James Low, "	7	"
The total being	91	"

whose owners signed said reorganization agreement after the 15th of January, 1886, the time limited in the agreement.

The following unsecured creditors of the St. Louis Ore and Steel Company have signed the reorganization agreement, prior to January 15, 1886, viz:

		Am't of claim.
756	The Lackawanna Iron and Coal Company	$81,041 08
	The Grand Tower Mining, Manufacturing and Transportation Company	20,831 81
	Jupiter iron works	50,577 79
	Iron Mountain Company	19,577 25
	L. M. Rumsey Manufacturing Company	337 46
	B. Zwart	26 00
	United States Rolling Stock Company	400 00

The whole number of shares of stock in the St. Louis Ore and Steel Company, whose owners or representatives signed the reorganization agreement, on or before the 15th of January, 1886, is 33,580, of which number 4,463 shares have not yet been delivered to the company on reorganization. The owners of 484 shares whose owners have not signed the agreement, have delivered that number of shares to the committee. Two dollars per share have been paid on all shares delivered to the committee, in part payment of the expenses of carrying out the reorganization agreement. The 484 shares held by the stockholders who have paid the $2 per share and delivered their stock to the committee, but who have not signed the agreement, are owned as follows: 147 shares owned by Schoonmaker; 140 shares by J. H. Brown; 100 shares by Joseph De Goncer; 4 shares by Mary A. Colston; 40 shares by George Warren Smith; and 53 shares by Clara Harriman. For the names of the stockholders signing said agreement see Exhibit No. 9, filed herewith and referred to as part of this report.

The committee on reorganization have taken the following steps in the performance of their duty:

757 C. P. Burnham, chairman of the committee, named in the reorganization agreement, stated that the committee had received 991 of the bonds of the Vulcan iron works of $1,000 each, with the unpaid coupons; on all the bonds there were two unpaid coupons and on a small portion three. The committee have also received 993 of the bonds of the St. Louis Ore and Steel Company of $1,000; these bonds have no coupons, being registered in the office of the Farmers' Loan and Trust Company of New York.

The committee has also received bonds representing $600,000 with coupons attached, issued by the Grand Tower and Carbondale Railroad Company. Of the Vulcan bonds not received by the committee three are owned by Capt. C. A. Rogers, who has signed the agreement; four others are held by L. A. Coquard, who declines to deliver them and has not signed the agreement; that leaves two bonds, which we cannot locate, and do not know who owns them. The committee have 993 of the St. Louis Ore and Steel Company bonds; the other seven belong to a gentleman or lady, who are absent from the United States and when last heard from were in Japan; these parties have not signed the agreement for reorganization. The committee have

all of the bonds of the Grand Tower and Carbondale Railroad Company. Soon after the organization of the committee in January, 1886, they issued a circular which was dated from day to day as it was sent out. This circular was sent to the holders of each class of bonds, requesting the bondholders to send their bonds to the committee. A copy of this circular is hereto annexed and referred to as part of this report marked Exhibit "I," to C. P. Burnham's testimony. After considerable progress had been made the committee reissued this circular some time in February, with an en-
758 dorsement on it, a copy of which is hereto annexed and made part of this report, marked Exhibit "2" to C. P. Burnham's testimony. This was sent by the committee to all bondholders who had not up to that time sent in their bonds, but had signed the agreement of reorganization.

In February, 1886, the committee issued a circular to the stockholders, asking them to send in their stock and pay their $2 per share; a copy of this circular is hereto annexed marked Exhibit "3" to Burnham's testimony. On the 26th of March the committee issued another circular, signed by the solicitors of all parties in interest, to stockholders who had signed the agreement, but who had not then delivered their stock to the committee. A copy of this circular is hereto annexed and referred to as part of this report, marked Exhibit "4," to Burnham's testimony. The committee gave receipts to the holders, owners and representatives of the Vulcan iron works bonds, giving the number of bonds and coupons received by the committee from each individual; a copy of the form of the receipt is hereto annexed and referred to as part of this report, marked Exhibit "5," to Burnham's testimony.

The committee also gave receipts for the bonds of the St. Louis Ore and Steel Company to the owners, holders and representatives of the same. A copy of the form of this receipt is hereto annexed and referred to as part of this report, marked Exhibit "6" to Burnham's testimony. Also receipts for the bonds of the Grand Tower and Carbondale Railroad Company, a copy of the form of which receipts is hereto annexed and referred to as part of this report, marked Exhibit "7" to Burnham's testimony. The committee also gave receipts for the capital stock of the St. Louis Ore and Steel
759 Company, to the owners thereof, who delivered the same to them. A copy of the form of these receipts is hereto annexed and referred to as part of this report, marked Exhibit "8" to C. P. Burnham's testimony.

The whole number of shares issued of the capital stock of the St. Louis Ore and Steel Company is 35,878. The number of shares signed prior to January 15, 1886, is ---------- 33,580
Subsequent thereto ---------- 91

Total number signed for ---------- 33,671

Of the shares signed for there have been delivered to the committee of reorganization 29,208 shares; of those not signed for 484 shares; 4,463 shares have not yet been delivered to the committee.

Under that paragraph of the order of reference directing me "to inquire and state the probable amount of costs and expenses attending this suit, and the foreclosure of said mortgage respectively, including the settlement of the accounts of the receiver in this cause," considerable testimony has been taken, and is herewith filed.

The several trustees, counsel, solicitors and the receiver have suggested the amount which they consider reasonable for the services rendered and to be rendered by them. Regarding these amounts, the parties interested in the bonds of the defendant corporation were not agreed. Counsel had suggested the possibility of reaching an agreement during the summer, but the absence of several of them has prevented consultations to that end. As the amounts of these several allowances now seem to be about the only matters remaining in this litigation regarding which the parties are not agreed, and in respect of which, as between them, the court will be called upon to act, and in order that this report may be promptly
760 acted upon as the basis of a decree, still giving the parties further time within which to reach a settlement among themselves, it has been agreed by counsel, and it accords with my own judgment, that I should recommend the allowance and payment by the receiver on account of services and expenses, the following sums:

To E. T. Allen, solicitor for R. M. Olyphant	$2,000
" R. M. Olyphant, trustee	2,653 68
" Dyer, Lee & Ellis, counsel for St. Louis Ore and Steel Co., and Grand Tower and Carbondale R. R. Co.	2,000
" R. J. Lackland, trustee	400
" T. B. Edgar, "	400
" Noble & Orrick	3,000
" Farmers' Loan & Trust Co., trustee	400
" Hough, Overall & Judson, and Turner, Lee & McClure	2,800
" E. A. Hitchcock, receiver	6,000
" Hitchcock, Madill & Finkelnburg	10,000
And to the special master	2,500
	$32,153 68

and leave to be reported hereafter the total amount of such allowances, whether as agreed upon by the parties or fixed by me on the basis of the evidence adduced.

It was also agreed by counsel in view of the constantly increasing funds in the hands of the receiver from which further allowances, when made, and other costs, including allowances and expenses of the committee under the reorganization agreement can be paid, and in view of the fact herein reported that the said committee now control all except thirteen of all the bonds issued by the St. Louis
761 Ore and Steel Company, it would not be necessary for a larger sum than $60,000 to be paid in cash by the purchasers at the sale of the mortgaged property under a decree provided the purchase

should be made by such committee, and the property should not bring at said sale an amount largely in excess of the bonds and accrued interest.

I, therefore, respectfully recommend that the sum of $60,000 be named in the decree as the amount required to be paid by the purchasers at the sale in cash, to meet costs and expenses of this suit and the litigation connected therewith.

It appears from the evidence introduced before the master since the list of equitable liens allowed by the court prior to April 15, 1886, marked Exhibit "G" to Exhibit No. 4 was filed in evidence as above stated, showing the balance due on said allowed lien claims to amount at that time to the sum of $35,217.96; that the full amounts of said lien claims with interest have all been paid by the receiver out of the earnings of the company. It further appears, from testimony introduced on the 24th of September, 1886, that the claim of the Wabash, St. Louis and Pacific Railway Company against the ore and steel company, above reported as amounting to the sum of $23,343.12 principal, and $2,443.29 interest, amounting in the aggregate to $25,786.41, has been adjusted and settled in full on the first of July, 1884, by the payment of $8,056.73, as appears from a copy of said settlement, filed herewith and marked Exhibit "A" to O. L. Garrison's testimony of September 24, 1886. In effecting this settlement the claim of $4,630.55 against the Wabash, St. Louis and Pacific Railway Company above stated as one of the assets of the ore and steel company was made use of as an
762 offset to the claim of the Wabash, St. Louis and Pacific Railway Company. This, of course, changes the statement heretofore made of the liabilities and assets of the ore and steele company to that extent. It appears, also, that the claim of the Merchants' National bank of $10,000 and interest stated at $1,046.67 has been paid and extinguished.

It also appears from the evidence introduced on the 24th of September, 1886, that a settlement of the claim against Cherrie & Co. has been effected and agreed on at fifty cents on the dollar; this claim, as stated in the former testimony, amounted to $116,023.98. This settlement gives the ore and steel company about $58,011.99 net. Of this amount the ore and steel company is entitled to receive the half of $42,523.08, being $21,261.54, in its own right. The Mechanics' bank and Boatmen's Savings bank hold acceptances of Cherrie & Co. for the face of their claims, and are entitled to receive the fifty cents on the dollar of the face of said acceptances from the assets of Cherrie & Co., which will reduce their claims to that extent.

The claim of the Missouri Pacific Railway Company above reported as amounting to the sum of $23,343.12 and interest, has been adjusted *pro tanto*, and allowed as as equitable lien for the sum of $10,159.55. This settlement, however, leaves the sum of $3,167.88 of said claim for future adjustment. This claim to the extent allowed, viz: $10,159.55, has recently been paid by the receiver.

A brief statement of the changes that have taken place in the assets and liabilities of the St. Louis Ore and Steel Company since

the filing of Exhibit No. 4 has been prepared by O. L. Garrison, agent for the receiver, and is herewith filed, marked Exhibit No. 4 A, and referred to for a more particular statement of such changes.

763 I find from the evidence that there was a larger amount of property in the State of Missouri, outside of the city of St. Louis, described in the Olyphant mortgage of date May 1, 1884, than was described in the mortgage of the ore and steel company to the Farmers' Loan and Trust Company, of date May 3, 1882. The reason of this discrepancy, it appears from the evidence, was the fact that at the time the consolidated agreement above mentioned was entered into there was no accurate list of real estate owned by the Pilot Knob Company in its possession, and it was only by a diligent search, made by the Sterling and Webster Abstract Company, after the mortgage to the Farmers' Loan and Trust Company was made, that a correct list of such real estate was constructed. Owing probably to the disturbances that occurred during the war, some of the deeds to the Pilot Knob property, called for by the records of the Pilot Knob Company, could not be found; but by diligent search, made afterwards, some were found; and again there were deeds found of which there was no mention, and which were not recorded. This serves to explain, in part, the difference existing between the description of the real estate embraced in the above-mentioned mortgages. Mr. B. F. Webster, in his testimony of September 24, 1886, herewith filed and referred to as part of this report, gives a detailed statement of these discrepancies, which is embodied in Exhibit "A" to B. F. Webster's testimony of September 24, 1886, herewith filed and referred to as part of this report.

I find from the pleadings in this cause, and from the evidence before me, that it was the intention of the St. Louis Ore and Steel Company to include in the mortgage deed of trust to the Farmers' Loan and Trust Company, of date May 3, 1882, all the real

764 estate situated in this State, outside of the city of St. Louis, which had been acquired by the St. Louis Ore and Steel Company, through the consolidation of the Vulcan Steel Company, with the Pilot Knob Iron Company; and that it was the intention of said St. Louis Ore and Steel Company, in its mortgage deed of trust to Olyphant and Hitchcock, of date May 1, 1884, to give to the holders of the bonds thereby secured the security of a second lien on the same property; that in preparing the list of such real estate contained in said mortgage deed of trust of May 3, 1882, many pieces thereof, were inadvertently omitted therefrom, definite descriptions of which were contained in the mortgage deed of trust of date May 1, 1884, and that a few pieces of such real estate were omitted from the description in both mortgages.

The parties to this cause have consented, and I accordingly recommend that in the decree of foreclosure herein all real estate situated in the State of Missouri, outside of the city of St. Louis, which was acquired by the St. Louis Ore and Steel Company through the consolidation between the Vulcan Steel Company and the Pilot Knob Iron Company, should be regarded and held as if fully and

completely described in both the said mortgages, viz: that of date May 3, 1882, and that of date May 1, 1884, making the mortgage of the earlier date a first, and that of the later date a second lien thereon. The description of the real estate in which the foregoing recommendation is made, will be found in said Exhibit "A" to the testimony of B. F. Webster, in the record of proceedings herewith filed.

It appears from the evidence and the master finds that there are a number of errors in the descriptions of the property as
765 printed in the exhibits to the original bill filed in this cause, which are stated in detail by Edmund T. Allen, in his testimony of September 24, 1886, herewith filed as part of this report, and I recommend that the corrections suggested by him in said testimony, be adopted by the court in entering its decree herein.

It appears from the pleadings, and from the evidence before me that no interest has been paid on the bonds of the Farmers' Loan and Trust Company since the payment of the interest due May 1, 1884, and default has been made in the payment of all interest due by the St. Louis Ore and Steel Company since that date.

I have endeavored in the foregoing pages to report upon such matters as were referred to me in the order in which they were brought before me as fully as the haste with which this report has been prepared, and the changes which are constantly taking place would permit. In view of the possibility that matters have been omitted, which should have been included herein, and of the fact that the amounts to be finally allowed the purchasing committee, trustees, and solicitors, will have to be adjusted hereafter, I shall by adjournment keep open the hearings under the order of reference until this report shall have been filed and examined by the court.

By this course new orders of reference, and notice thereof will be unnecessary in case a supplemental report should be required.

Respectfully submitted.

JOHN WICKHAM,
Special Master.

St. Louis, October 12, 1886.

766 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered, that on the seventh day of December, A. D. 1885, the following among other proceedings were had and appeared of record in said court, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL COMPANY *et al.*, Defendants. } 2394.

It is ordered by the court, that all persons having claims against said St. Louis Ore and Steel Company, not being claims directly in-

curred by the receiver in the course of his administration are required to present their claims by intervening in said cause on or before the 22d day of December, instant, after which day all such claims will be disallowed.

It is further ordered by the court, that the receiver of the St. Louis Ore and Steel Company publish this order in some daily newspaper printed and published in the city of St. Louis, for one week.

And afterwards, to wit, on the sixteenth day of December, A. D. 1885, the following further proceedings were had and appear of record in said cause, to wit:

767 ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } 2394.

Ordered that the following be entered *nunc pro tunc* as of December 9. It is hereby ordered that the order made in this cause on Monday, December 7, 1885, regarding the presentation of intervening claims be amended so as to read as follows:

"It is ordered by the court that all persons having claims against St. Louis Ore and Steel Company for labor, supplies or materials done or furnished within six months next before the appointment of the receiver herein, and not to include claims directly incurred by the receiver in the course of his administration, are required to present their claims by intervening in said cause on or before the 22d day of December, instant, after which day all such claims not so presented, will be disallowed.

"It is further ordered by the court that the receiver of the St. Louis Ore and Steel Company publish this order in some daily newspaper printed and published in the city of St. Louis for one week."

And afterwards, to wit: on the eighth of January, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } 2394.

768 Ordered that as to all claims heretofore allowed by the court as equitable liens, the receiver shall pay thirty per cent. on the amounts thereof, reserving the future distribution subject to further orders of this court.

And afterwards, to wit: on the twenty-sixth day of January, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } In Equity. No. 2394.

At chambers, before the Honorable David J. Brewer, circuit judge.

Order on petition of Ethan A. Hitchcock, receiver, etc., for authority to make further contracts for selling and delivering iron ore, to be mined by said receiver, on the lands of The St. Louis Ore and Steel Company, defendant.

JANUARY 26, 1886.

On reading and filing the petition of Ethan A. Hitchcock, receiver, etc., praying for authority to continue the mining operations on the lands of said St. Louis Ore and Steel Company, defendant, heretofore authorized, and to make further contracts for the sale and delivery of iron ore during the remainder of the current year 1886, for a further quantity of said ore, not exceeding, in all, one hundred and fifty thousand tons, and it appearing that due notice of
769 said petition has been given to the several parties to said cause, and no objection being made thereto:

It is ordered that the said receiver be, and he is hereby authorized as such, to make and enter into such further contract or contracts, from time to time, for the sale and delivery from time to time during the remainder of the current year, 1886, of iron ore to be mined under the direction of said receiver upon the lands of said defendant company, to the extent and upon the conditions following:

The additional quantity of ore, for the sale and delivery of which the said receiver is hereby authorized to contract over and above the quantities heretofore authorized to be mined and sold by him, shall not exceed one hundred and fifty (150,000) thousand tons in all. All such contracts to call for deliveries to be made during the current year 1886. The details of all contracts to be made under this order, and the hiring of hands for the mining and operating of said lands are left to the discretion of the receiver, who is authorized to use his best judgment therein for the benefit of the parties concerned, and to sell and contract for the delivery of said ore, on such terms and at such prices, from time to time, as he shall think best, provided that, in the judgment of said receiver, the same will result in a net profit over and above all mining and operating expenses. All such contracts shall be made expressly subject to the sale of the property in the receiver's charge, and shall show that the obligation of the receiver under such contracts, and each of them, is to terminate upon or with the termination of the receivership in this cause, and upon the delivery of said mines and property of said defendant company, under and pursuant to any order of this court, to any purchaser thereof, or other per-
770 son to whom the receiver may be ordered by the court to deliver the same. And any sale of said property, or any

part thereof, which may be ordered pending said contracts, or either of them, and any delivery of said property, or any part thereof, to any purchaser thereof, or other person which the court may order the receiver to make, will be ordered to be made subject to any contracts made by said receiver in pursuance of this order, and the purchaser at any such sale will be required to bid for and take over the property subject to the obligations of such contracts, and to assume the fulfillment thereof so far as such contracts remain to be completed.

DAVID J. BREWER,
Circuit Judge.

And afterwards, to wit: on the second day of February, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

In the matter of the application for the payment for an additional dividend for thirty per cent. on claims for labor and supplies heretofore confirmed, it is ordered that the master report with all convenient speed, what funds are in the hands of the receiver.

And afterwards, on the 8th day of February, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

771 ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

The exceptions to the master's report on the application for payment of an additional dividend having heretofore been submitted, and the court having considered the same, it is ordered that said exceptions be overruled and that the master's report be in all things confirmed.

And afterwards, to wit: on the 1st day of March, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

It is ordered that the report of the receivers as to compromise and payment of judgments under order of March 18, 1885, filed on the 25th day of February, 1886, be and the same is hereby in all things confirmed.

On the eighteenth day of March, 1885, the following, among other proceedings, were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

Now comes the receiver herein, by his solicitors, and files his petition for authority to purchase certain property at sheriff's and marshal's sale, at Mount Carbon, Jackson county, Illinois, on
772 Tuesday, March 24, 1885, and also for authority to negotiate for the compromise of certain attachments and other suits against the St. Louis Ore and Steel Company in the State of Illinois; which petition coming on to be heard and having been considered by the court, it is ordered that the same be and it is hereby approved, and it is further ordered that the receiver be and he is hereby authorized to purchase said property and to negotiate for the compromise of the attachments and other suits pending in the State of Illinois against the St. Louis Ore and Steel Company, and that the order of the United States circuit court for the southern district of Illinois be in all respects confirmed.

And also on said first day of March, A. D. 1866, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

Now this day appears Chas. Claflin Allen and by leave of court enters his appearance *nunc pro tunc* as of March 16, 1885, as solicitor for intervenor, the L. M. Rumsey Manufacturing Company. George D. Reynolds withdraws as solicitor for William R. Reid, intervenor, and thereupon Charles Claflin Allen enters his appearance as solicitor for said intervenor.

And also on said first day of March, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

773 ROBERT M. OLYPHANT, Complainant,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394.

On reading and filing the petition of Ethan A. Hitchcock, receiver, etc., this day presented, praying for authority to pay further dividends upon intervening claims allowed in this cause, and it appearing to the court that sufficient moneys are now in the hands of the receiver for that purpose,

It is ordered that the said receiver be and he is hereby authorized and directed to pay out of the net earnings of the St. Louis Ore and Steel Company in his hands a further dividend of thirty per

cent upon the principal amounts of all claims which have been allowed in favor of intervening creditors in this cause, as entitled to an equitable lien upon the earnings of such company, prior in right to the mortgage sued on, and upon which a dividend of thirty per cent. has been heretofore ordered to be paid.

And the said receiver is further authorized and directed to pay a dividend of sixty per cent. upon the principal amounts of all intervening claims allowed against said St. Louis Ore and Steel Company as entitled to an equitable lien upon the earnings of said company, prior in right to the mortgage sued on, and upon which claims no dividend has heretofore been ordered to be paid.

Said dividends are to be paid to the several attorneys of record for said claimants in this cause respectively, on and after the third day of March, 1886, upon proper receipts therefor, from said attorneys to said receiver.

And afterwards, to wit: on the 24th day of March, A. D.
774 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and THE FARMERS' Loan and Trust Company of New York, Complainants, *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, The Grand Tower and Carbondale Railroad Company, Rufus J. Lackland, Timothy B. Edgar, and Henry Hitchcock, Defendants.	Consolidated Cause. 2394 & 2507.

Upon motion of Edmund T. Allen, Esquire, solicitor for Robert M Olyphant, complainant, and John H. Overall, Esquire, solicitor for The Farmers' Loan and Trust Company, complainant, the several parties defendant by their solicitors appearing and consenting thereto, it is ordered that it be referred to John Wickham, Esquire, special master in this cause, to inquire and state to the court the several matters following, that is to say:

First. That the master inquire and state the number and description of all bonds and coupons now outstanding and heretofore issued by the several corporations mentioned in the original or amended bills of complaint filed in this cause and in the cross-bill of Lackland and Edgar defendants, that is to say by the Vulcan iron works, the Vulcan steel works, the St. Louis Ore and Steel Company, and the Grand Tower and Carbondale Railroad Company; and that the said master compute and set forth the several amounts as well of principal as of interest remaining unpaid on said bonds and coupons respectively, and whether due or not by the terms thereof, and the names of the lawful holders thereof respectively; and
775 that he state in what manner the same were secured or intended to be secured respectively by any and what mortgage deed of trust or other instrument or agreement executed by said corporation respectively, and what other sums, if any, may be due under the terms of any such mortgage, deed of trust, instrument or

agreement and to whom payable respectively; also what lands and tenements and also what particular personal property, machinery, tools, implements, apparatus, fixtures and appurtenances, rights and franchises, if any, are embraced within the provisions of any and every such mortgage, deed of trust, instrument or agreement and subject to sale or disposition according to the provisions thereof.

Second. That the said master inquire and state the amount and description of all other existing indebtedness of said corporations respectively by them admitted to be owing, and whether due or not, including principal and interest accrued, also the description, nature and amounts respectively, and all other existing claims against the same, and in what manner evidenced or ascertained respectively, and the particulars of any suits or proceedings pending in respect of such debts and demands respectively, and what if any lien or preference exists or is alleged in respect of such debts or demands or any, and which of them.

Third. That the said master inquire and state with reasonable certainty, the nature and description of all assets and property of said corporations respectively, other than the property included within the terms of the mortgages, deeds of trust, instruments or agreements above mentioned and so far as practicable the probable or estimated value thereof, and to what extent available for the payment of the indebtedness of said corporations, including
776 therein all assets and property in the charge or custody of the receiver appointed in this cause.

Fourth. That the said master inquire and state the particulars of any agreement which may have been entered into by any of the creditors of said corporations or either of them, in respect of the adjustment or settlement of their demands, and the parties to any such agreement, and what steps, if any, have been taken thereunder, and the master is to be at liberty to state any special circumstances, and to make any recommendation which shall to him appear expedient and for the interests of the parties to this cause or of the said corporations, the creditors and stockholders thereof.

Fifth. That the said master inquire and state the probable amount of costs and expenses attending this suit and the foreclosure of said mortgages respectively, including the settlement of the accounts of the receivers in this cause, also the probable costs and expenses incurred or likely to be incurred in connection with other suits and proceedings such as above mentioned, and in all suits ancillary to this suit.

Sixth. The said master is to be at liberty also to take evidence and report upon such other matters pertinent to the issues made herein as may be brought before him.

Seventh. The said special master shall fix the time and place for hearings under this order, giving at least five days' written notice thereof to the solicitors for said parties respectively.

And for the better discovery of the matters aforesaid the parties and the said receiver are to produce before the said master upon oath all books, papers and writings in their custody or power relat-

ing thereto and are to be examined, etc., as the said master shall direct.

777 And the master is to be at liberty to make a separate report as to any of the matters aforesaid and to state any special circumstances.

And this court doth reserve the consideration of all further directions until after the said master shall have made his report, and any of the parties are to be at liberty to apply to the court as they may be advised.

And afterwards, to wit: on the seventeenth day of May, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and FARMERS' LOAN & TRUST CO. OF N. Y., Complainants, *vs.* ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated Cause.

Now comes E. A. Hitchcock, the receiver herein by Hitchcock, Madill & Finkelnburg, his solicitors, and files his petition praying for an order to pay the remaining forty per cent. dividend on intervening claims, and the court having fully considered said petition, it is ordered that said receiver be and he is hereby authorized to pay to the several intervening creditors in this cause, whose claims have heretofore been allowed as equitable liens upon the earnings of the St. Louis Ore and Steel Company, prior in right to the mortgage sued on, the remaining forty per cent. of their several intervening claims, together with interest remaining unpaid thereon; such payment to be made to the several attorneys of record in this cause for said claimants respectively.

778 And afterwards, to wit: on the twenty-fourth day of May, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and FARMERS' LOAN AND TRUST CO. OF NEW YORK, Complainants, *vs.* ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated.

On reading and filing the petition of Ethan A. Hitchcock, receiver, etc., this day presented in this behalf, and it appearing that due notice of said application has been given to the several parties to this cause, it is ordered by the court:

That the said Ethan A. Hitchcock, receiver, heretofore appointed in this cause, being also receiver appointed in the ancillary suit of Robert M. Olyphant *v.* The St. Louis Ore & Steel Company and others, now pending in the circuit court of the United States for the northern district of Illinois, is hereby remitted to the said circuit court of the United States for the northern district of Illinois, for instruction and authority to act in respect of the several demands

on the part of the said St. Louis Ore and Steel Company against The North Chicago Rolling Mill Company, and against Robert M. Cherry and the assigned estate of said Cherry heretofore in the hands of Robert E. Jenkins, assignee, and against George S. Fink, who is said to have received certain property composing said assigned estate, or some part thereof; and the said receiver is authorized to make application in this behalf to the said circuit court of the United States for the northern district of Illinois in the said ancillary suit of Olyphant *v.* The St. Louis Ore and Steel Company, pending in said court for instruction in respect to said matters, and in
779 respect of such proceedings, whether for the compromise or settlement of said claims, or for the collection thereof by legal process as to said circuit court of the United States for the northern district of Illinois may seem expedient; and said receiver is further authorized to submit to said circuit court of the United States for the northern district of Illinois, all questions which may arise touching the duty of said receiver in respect of assets belonging, or which may be claimed as belonging to the St. Louis Ore and Steel Company in said northern district of Illinois, and in respect of all demands or rights of action on behalf of said St. Louis Ore and Steel Company, or which may have accrued to said receiver as such, in respect of any assets of said St. Louis Ore and Steel Company in said northern district, including any and all demands against any person or persons residing or found within said northern district of Illinois.

And afterwards, to wit: on the 21st day of June, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and FARMERS' Loan and Trust Company of New York, Complainants, *vs.* ST. LOUIS ORE AND STEEL COMPANY *et al.*, Defendants.	2394 & 2507.	Consolidated.

In re intervening petition of Jupiter iron works.

Now comes the intervenor, by E. Cunningham, Jr., its solicitor, and withdraws its exceptions to the master's report heretofore filed herein, and said intervenor further surrenders and files for
780 cancellation a certain promissory note executed by the St. Louis Ore and Steel Company to the order of the intervenor, and dated March 10, 1884.

And the court having fully considered the master's report, it is ordered that the same be, and it is hereby in all things confirmed.

And the court finds that the intervenor, The Jupiter Iron Works, is entitled to have allowed it is a debt against the St. Louis Ore and Steel Company the following amounts to wit:

For rent from December 1, 1883 to March 1, 1884, the sum of

$12,575 and $1,743.72 for six per cent. interest thereon from March 1, 1884, to June 21, 1886.

Also for rent from March 1, 1884, to June 1, 1884, the sum of $12,575, and $1,555.09 for six per cent. interest thereon from June 1, 1884, to June 21, 1886.

Also for rent from June 1, 1884 to September 1, 1884, the sum of $12,575, and $1,366.47, for six per cent. interest thereon from September 1, 1884, to June 21, 1886.

Also for rent from September 1, 1884, to December 1, 1884, the sum of $12,575, and $1,177.84, for six per cent. interest thereon from December 1, 1884, to June 21, 1886, being in the aggregate for rent due and interest thereon from June 21, 1886, the sum of $56,143.12.

Also for taxes paid by intervenor on the leasehold premises on December 29, 1884, the sum of $1,864.40, and $165.93 for six per cent. interest thereon from that date until June 21, 1886, the sums so allowed said intervenor for rent and taxes amounting in the aggregate to the sum of $58,173.45.

781 And the court finds that the St. Louis Ore and Steel Company is entitled to an allowance of $8,307, as the value of permanent and valuable improvements made by it and put upon the leased property during the period of the lease, and left on the leased property December 1, 1884, deducting from this amount however the sum of $5,307.5, allowed said intervenor as the value of property and machinery not restored to it by the receiver at the end of the lease.

The court therefore finds that the St. Louis Ore and Steel Company is entitled to recover of the intervenor, The Jupiter Iron Works, the sum of $3,280.83, and that this amount shall be deducted from the sum of $58,173.45, the aggregate amount allowed the intervenor herein, leaving a balance due said intervenor of $54,892.62.

And the court further finds that no part of the debt so allowed the intervenor against the St. Louis Ore and Steel Company is entitled to an equitable lien upon the property and earnings in the hands of the receiver, prior in right to the mortgage sued on herein, but that the same must stand as a general judgment against the property of said St. Louis Ore and Steel Company.

And afterwards, to wit, on the twenty-second day of September, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

782 ROBERT M. OLYPHANT and FARMERS' LOAN & TRUST CO. OF N. Y., Complainants, *vs.* ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } Consolidated. 2394 & 2507.

In re intervening petition of Lackawanna Iron and Coal Company.

The exceptions of the intervenor and of the receiver to the master's report herein having been argued and submitted, and the court having fully considered the same, it is ordered that said exceptions

be and the same are hereby overruled, and the master's report is in all things confirmed, except so much of said report as requires the intervenor to surrender or assign over the acceptance of Cherrie and Company.

And the court finds that the intervenor, The Lackawanna Iron and Coal Company, is entitled to have allowed it as a debt against the St. Louis Ore and Steel Company, as damages for the non-fulfillment of the contract of December 22, 1884, the sum of twenty-three thousand and one and seventy-five one-hundredths ($23,001.75) dollars, with interest at 6% per annum from November 30, 1884, the average date when deliveries were made, until paid.

And the court further finds that the intervenor, The Lackawanna Iron and Coal Company, is entitled to have allowed it as a debt against the St. Louis Ore and Steel Company for steel rails delivered under contract of December 22, 1886, the sum of twenty-two thousand and forty and thirty one-hundredths ($22,040.30) dollars with interest at 6% per annum from July 20, 1884, until paid.

783 And the court further finds that the intervenor, The Lackawanna Iron and Coal Company, is entitled to have allowed it as a debt against the St. Louis Ore and Steel Company the sum of thirty-six thousand ($36,000) dollars, with interest at 6% per annum from June 20, 1884, until paid, for steel rails furnished and delivered to said St. Louis Ore and Steel Company by the intervenor and accepted by it under the contract of December 22, 1883.

And the court further finds that none of the aforesaid debts so allowed the intervenor as against the St. Louis Ore and Steel Company are entitled to an equitable lien upon the property or earnings in the hands of the receiver, prior in right to any of the mortgages mentioned in the bill of complaint of Robert M. Olyphant.

And afterwards, to wit, on the fifteenth day of October, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and FARMERS' Loan & Trust Co. of New York, Complainants, *vs.* ST. LOUIS ORE & STEEL CO. *et al.*, Defendants.	2394 & 2507.	Consolidated.

In re master's report on hearing under order of March 24, 1886.

The report of the special master herein, filed on the 12th day of October, A. D. 1886, coming on to be heard, and it appearing to the court that no exceptions have been filed thereto, the counsel of the respective parties assenting, it is ordered, adjudged and de-

784 creed by the court, that said report be, and it is, in all things confirmed.

It is further ordered, adjudged and decreed by the court that the receiver proceed to pay out of the funds in his hands to the follow-

ing-named parties, the respective amounts allowed on account, as follows, to wit:

To E. T. Allen, solicitor for R. M. Olyphant	$2,000 00
" R. M. Olyphant, trustee	2,653 68
" Dyer, Lee & Ellis, counsel for St. Louis Ore and Steel Co., and Grand Tower and Carbondale R. R. Co.	2,000 00
" R. J. Lackland, trustee	400 00
" T. B. Edgar, trustee	400 00
" Noble & Orrick	3,000 00
" Farmers' Loan and Trust Co., trustee	400 00
" Hough, Overall and Judson, and Turner, Lee & McClure	2,800 00
" E. A. Hitchcock, receiver	6,000 00
" Hitchcock, Medill & Finkelnburg	10,000 00
And to the special master	2,500 00
	$32,153 68

And afterwards, to wit, on the 3d day of November, A. D. 1886, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT and FARMERS' Loan and Trust Co. of New York, Complainants,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants.
} 2394 & 2507. Consolidated.

In re intervening petition of Iron Mountain Company.

785 All exceptions to the master's report herein being waived by the complainants, R. J. Lackland and T. B. Edgar, trustees, and E. A. Hitchcock, receiver, and the court having fully considered said report, it is ordered that the same be and it hereby is in all things confirmed.

And the court finds that the intervenor, The Iron Mountain Company, is entitled to an allowance against the St. Louis Ore and Steel Company for the sum of twenty-two thousand, five hundred and twenty-seven and $\frac{26}{100}$ ($22,527.26) dollars as a preferred supply claim, prior in right to the lien of the mortgage sued on in this cause.

And the receiver herein is ordered to pay to the intervenor, The Iron Mountain Company, the said sum of twenty-two thousand, five hundred and twenty-seven and $\frac{26}{100}$ ($22,527.26) dollars out of the property and earnings of the St. Louis Ore and Steel Company in his hands, the intervenor agreeing that the suits heretofore prosecuted by it in the States of Pennsylvania and Illinois against the St. Louis Ore and Steel Company shall be dismissed in said several States upon payment of costs by the St. Louis Ore and Steel Company.

And afterwards, to wit: on the seventh day of February, A. D. 1887, the following further proceedings were had and appear of record in said cause, to wit:

786	ROBERT M. OLYPHANT and FARMERS' LOAN and TRUST Co. of N. Y., Complainants, *vs.* THE ST. LOUIS ORE & STEEL COMPANY *et al.*, Defendants.	2394 & 2507. Consolidated.

On reading and filing the petition of the defendants, The St. Louis Ore and Steel Company in the above cause, praying that so much of the order made in said cause on October 15, 1886, directing a sale of the mortgaged property therein mentioned be set aside.

It is ordered, all the parties to this cause consenting thereto, that so much of the decree entered herein on the 15th day of October, A. D. 1886, as authorizes and directs a sale of this property therein described be vacated; also,

That the said St. Louis Ore and Steel Company, defendant, is hereby authorized to proceed with and complete the adjustment of its liabilities in the manner proposed in the petition filed in court this day; also,

The defendant (and cross-complainants) Lackland and Edgar, The Farmers' Loan and Trust Company and Robert M. Olyphant, as trustees respectively, in the mortgages mentioned in said decree, and each of them, be and they are hereby authorized to do and perform all things necessary to carry out said proposition and settlement on their part; also,

That said Lackland and Edgar are hereby authorized and directed to supply any moneys now held by them as trustees for the security of the so-called "Vulcan bonds," towards the acquisition of the six "Vulcan bonds" whose holders have not assented to the adjustment of the liabilities of said St. Louis Ore and Steel Company above mentioned; also,

787 That the receiver herein retain in his hands a sum of money adequate to meet all the obligations of the receivership, subject to the further orders of this court, and is hereby directed to turn over to the said St. Louis Ore and Steel Company all the residue and remainder of the property and moneys now in his hands, and to assign to said corporation all outstanding contracts with third parties made by him under the orders of this court: Provided however, that said St. Louis Ore and Steel Company shall take the same subject to all leases, contracts or engagements entered into by said receiver regarding its said property authorized by the orders of this court, other courts having ancillary jurisdiction of this cause, and subject also to the performance by said company of its agreements as recited in said petition for the adjustment of its liabilities.

And it is further ordered that said receiver prepare and file his accounts as such receiver within thirty days; and the report this

day filed by the special master in this cause is hereby referred back to the special master with directions to make a final report concerning the accounts and matters aforesaid on the first Monday in March, A. D. 1887; and the further consideration of said matters is reserved by the court.

And *whereas*, to wit: on the tenth day of September, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

788 ROBERT M. OLYPHANT *et al.*, Complainants, *vs.* ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated.

Now at this day comes Robert M. Olyphant, complainant in the original bill of complainant filed in this cause by Edmund T. Allen his solicitor of record, and moves the court that an order be entered in said consolidated cause discharging the receiver therein, canceling his bond and discontinuing said cause.

And it appearing to the court that all matters in controversy between the said complainants and cross-complainants and the several defendants in said consolidated cause as set forth in the original bills of complaint, and cross-bills filed therein, to wit: in the manner and upon the terms set forth in the petition of The St. Louis Ore and Steel Company, defendant, filed in said cause on February 7, 1887, and in the order of this court approving said petition made on February 7, 1887, and in the final report of the special master in this cause filed on March 24, 1887, and the order of this court approving said final report, made on March 29, 1887, and in the report of Ethan A. Hitchcock, receiver in said cause, filed therein on March 28, 1887, which report was confirmed by the order of this court on March 29, 1887.

And it further appearing to the court on reading the petition of Ethan A. Hitchcock, receiver in said cause, filed in this court on September 3, 1888, that in pursuance of the orders of this court above mentioned made in this cause on March 29, 1887, the said receiver has paid out of the moneys remaining in his hands at the date of said orders, the several sums therein directed to
789 be paid by him, and has in all other respects obeyed said orders last mentioned, and that said receiver no longer has in his charge or custody, any money, property or assets belonging to said defendant, The St. Louis Ore and Steel Company, except the balance ($5,080.86) five thousand and eighty dollars and eighty-six cents, mentioned in the petition of said receiver, filed herein on September 3, 1888, and that no reason exists why said balance should not be paid over to said St. Louis Ore and Steel Company, or the proper officers thereof.

And it further appearing to the court that due notice of said motion has been given to and accepted by all the remaining parties to said consolidated cause, as well the defendants as the cross-complain-

ants therein, and that all said parties respectively by their solicitors of record have consented to the entry of an order such as prayed for by said complainant.

It is ordered, adjudged and decreed that the said receiver account for and pay to the said St. Louis Ore and Steel Company the said balance of $5,080.86, and that upon producing and filing in this court the receipt of said St. Louis Ore and Steel Company, or the proper officer thereof, for said balance so ordered to be paid to the said St. Louis Ore and Steel Company the said Ethan A. Hitchcock stand discharged from all further liability as receiver in this behalf, and upon the filing by said receiver of such receipt as last mentioned, the clerk is directed to cancel the bond heretofore given by said receiver to secure the faithful performance of his duties as such; that said cause stand discontinued, all costs therein remaining unpaid to be taxed against and paid by The St. Louis Ore and Steel Company, defendant.

(Signed) AMOS M. THAYER, *Judge.*

790 We, the undersigned, solicitors respectively for the several parties to the above-entitled cause, and for the said receiver therein hereby acknowledge service of notice from the complainant therein of his purpose to move for the entry of the above order on the tenth day of September, 1888, and consent to the entry of said order.

DYER, LEE & ELLIS,
Att'ys for St. Louis Ore & Steel Co., Def't.
NOBLE & ORRICK,
Solicitors for Lackland & Edgar, Trustees.
HITCHCOCK, MADILL & FINKELNBURG,
Sol'rs for E. A. Hitchcock, Receiver.
HENRY HITCHCOCK, *Def't, Pro Se.*
FARMERS' LOAN & TRUST COMPANY,
By HOUGH, OVERALL & JUDSON, *Solicitors.*

And afterwards, to wit: on the third day of October, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

ROBERT M. OLYPHANT *et al.*, Complainants, *vs.* ST. LOUIS ORE AND STEEL COMPANY *et al.*, Defendants.	2394 & 2507. Consolidated October 3, 1888.

Now, comes Ethan A. Hitchcock, heretofore appointed receiver in the above-entitled cause, and produces in open court a receipt to him, the said receiver, from the defendant, The St. Louis Ore and Steel Company, by Oliver Garrison, secretary of said company, for the sum of ($5,080.86) five thousand and eighty dollars six cents in full of the balance ordered to be paid to the said company by said

receiver, to wit: by the order made in this cause on the 10th
791 day of September, 1888, the said sum being paid to and received by said company in satisfaction of all liability on the part of said receiver as such to said company; and thereupon the said receipt is filed in this cause, and the bond heretofore given by said receiver in the penal sum of $300,000 under date of August 19, 1884, conditioned for the faithful performance of his duties as such receiver in this behalf is canceled by the clerk of this court in pursuance of said order made herein on September 10, 1888.

(Signed) AMOS M. THAYER,
Dist. Judge.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the seventh day of February, A. D. 1887, there was filed in the office of the clerk of the circuit court of the United States, in and for the eastern district of Missouri, a certain petition of St. Louis Ore and Steel Company for order authorizing settlement of liabilities, etc., in words and figures, following, to wit:

792 UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States for the said Eastern District of Missouri.

ROBERT M. OLYPHANT, Complainant,
vs.
THE ST. LOUIS ORE & STEEL COMPANY and Others, Defendants.
} Consolidated Cause. Nos. 2394 and 2507. In Equity.

Now comes the said St. Louis Ore and Steel Company, defendant, by its solicitors, and shows unto your honors:

That since the rendering by this court in this cause of the decree herein made on the 15th day of October, 1886, certain action has been taken and agreements made by and between this defendant and its creditors and stockholders, including the holders of the several classes of bonds mentioned in said decree of October 15, 1886, looking towards an adjustment of the liabilities of *the liabilities of* this company by the issue of new bonds thereof in renewal and extension of the several classes of bonds in said decree mentioned, and to the avoidance of a sale under said decree of the mortgaged property therein mentioned; the particulars whereof are substantially as follows:

On the 23d day of October, A. D. 1886, was held upon due notice, a meeting of the board of directors of said St. Louis Ore and Steel Company, this defendant, a quorum of said board being present, at

which meeting were by said board of directors unanimously adopted certain resolutions, a copy of which is hereto annexed, marked Exhibit A.

By said resolutions a proposition was made on behalf of
793 this defendant to each of its creditors, as well as the several classes of its bondholders as its general or unsecured creditors, that the agreement for reorganization, theretofore signed by them, and being the same agreement which is mentioned in the said decree made in this cause on October 15, 1886, should be so modified that the several classes of new bonds ender which said agreement were proposed to be issued by a new corporation or corporations, should be issued by The St. Louis Ore and Steel Company, this defendant, and should be accepted by said creditors respectively, in lieu of the proposed bonds of such new corporation, but upon the same terms; the bonds so to be issued by this defendant company all to bear date January 1, 1887, and to correspond in other respects with the bonds provided for in said reorganization agreement, and to be secured upon the same property, and payable in like manner as therein provided; all said bondholders to accept income bonds of this defendant in payment of interest on their bonds accrued and unpaid to January 1, 1887, and all other creditors to accept such income bonds in payment of their demands. Said resolutions further in substance authorized the president of this defendant to issue circulars to the bondholders, creditors and stockholders of this company, submitting said proposition to them, and to prepare new bonds and mortgages such as therein contemplated; and also directed a special meeting of the shareholders of this defendant to be called for December 28, 1886, for the purpose of consenting to the issue of such new bonds.

Pursuant to said resolutions, a notice was prepared and signed by a majority of the directors of said company, this defendant, calling a special meeting of the shareholders of said St. Louis Ore and Steel
Company, to be held at the general office thereof in the city
794 of St. Louis, State of Missouri, on the 28th day of December, 1886, for the purposes mentioned in said resolutions of October 23, 1886; of which notice a true copy is hereto annexed marked Exhibit B; which notice was thereafter published once a week for sixty days next prior to said 28th day of December, 1886, to wit: in the Missouri Republican, a daily newspaper published in said city of St. Louis; and a copy of said notice was also mailed by the secretary of said company more than sixty days before said 28th of December, 1886, to every shareholder in said company, at his usual place of residence, and postage paid.

Also, in pursuance of said resolutions, the president of said company this defendant, without delay, prepared and sent by mail to every shareholder of said company, at his usual place of residence, to wit, on or about the 13th day of November, 1886, a circular calling attention to said resolutions of October 23, 1886, and enclosing a true copy thereof; of which circular to stockholders a true copy is hereto annexed, marked Exhibit C.

And on November 20, 1886, the president of this defendant also mailed to each and all of the several persons holders of the several

classes of bonds of said company, which are mentioned in said decree of October 15, 1886, or to their agents or representatives in that behalf, at their usual places of residence or business, a circular calling their attention to the proposition of this defendant company aforesaid, and requesting their acceptance thereof; of which circular a true copy is hereto annexed to this petition, marked Exhibit D.

In each of said circulars was enclosed a printed copy of said resolutions (Exhibit A) above mentioned, adopted by said board of directors of this defendant on October 23, 1886, and also the
795 paper or printed form of acceptance in said circular mentioned, to be signed by creditors assenting to said proposition, a copy of said last-mentioned paper or form of acceptance being also hereto annexed and marked Exhibit E.

On the 28th day of December, 1886, at nine o'clock in the forenoon, the special meeting of shareholders of this defendant company called for by the resolutions and notice aforesaid was held at the general office of said company in the city of St. Louis, State of Missouri, in the manner provided by law for holding such meetings; at which meeting were present or represented divers persons, stockdolders in said company, being the holders of more than two-thirds in value of all the capital stock of said company; and at said special meeting of stockholders were proposed and adopted by the unanimous vote of all said shareholders then and there present and represented as aforesaid, being the larger amount in value of all said capital stock, certain resolutions; in and by which resolutions the said shareholders unanimously approved the action of said board of directors in adopting said resolutions of October 23, 1886, and unanimously consented to the issue by this defendant company of new bonds thereof in the amounts and of the descriptions respectively, and to be secured respectively in the manner contemplated by said resolutions of October 23, 1886; and further requested the president of this defendant to make known to this honorable court the action so taken in this behalf by this defendant.

A certified copy of the said resolutions adopted at said special meeting of shareholders of this defendant is annexed to this petition marked Exhibit F, and is hereby referred to as part thereof.

That in response to said circular of November 20, 1886,
796 addressed to said bondholders as above stated, the holders of each and all of the several classes of bonds mentioned in said decree of October 15, 1886, with the exceptions hereinafter stated, signified their acceptance of the proposition made to them by this defendant, as set forth in said circular of November 20, 1886, and in said resolutions of said board of directors adopted October 23, 1886, therein mentioned, to wit: by returning to this company, by them duly signed, the printed form of acceptance, a copy whereof is above set forth—that is to say:

Said proposition so made by this defendant for the settlement of its liabilities was so as aforesaid accepted by the holders of (994) nine hundred and ninety-four (being all except six) of those certain one thousand bonds for one thousand dollars each first mentioned in said decree of October 15, 1886, being the bonds heretofore issued

by the Vulcan Iron works, dated May 24, 1875, and which fell due on April 15, 1885, and secured by the deed of trust or mortgage dated May 24, 1875, to Lackland and Edgar, trustees, first mentioned in said decree of October 15, 1886;

And said proposition was also accepted in the manner aforesaid by the holders of all those certain one thousand bonds, each for the sum of $1,000, secondly mentioned in said decree of October 15, 1886, being those certain bonds for one million dollars in all, dated May 3, 1882, secured by mortgage of even date therewith to the Farmers' Loan and Trust Company, secondly mentioned in said decree of October 15, 1886;

And said proposition was also accepted in manner aforesaid by the holders of all those certain seven hundred bonds thirdly
797 mentioned in said decree of October 15, 1886, dated October 1, 1883, issued by the Grand Tower and Carbondale Railroad Company, and guaranteed by the St. Louis Ore and Steel Company, this defendant, which bond and guarantee were secured by the mortgage to Olyphant and Hitchcock, trustees, dated May 1, 1884, and also mentioned in said decree of October 15, 1886;

And this defendant states that said several acceptances in writing of said proposition of this defendant, by or on behalf of the several bondholders so accepting the same as aforesaid, are now in the possession of this defendant; and that the committee appointed under the bondholders' agreement, also mentioned in said decree of October 15, 1886, as this defendant is informed and believes, and so states to the court, are in actual possession of all and singular the said several bonds the holders whereof have so accepted said proposition, except seven of said bonds dated May 3, 1882, the holder whereof nevertheless hath by her authorized agent also accepted said proposition;

And this defendant further shows to the court, that also in pursuance of said resolutions of said board of directors, adopted October 23, 1886, this defendant caused to be prepared new bonds and mortgages of the classes and descriptions contemplated and provided for by said resolutions of said board of directors, and of said shareholders above mentioned which new securities as to the form and tenor thereof are in all respects such as contemplated in and provided for by the former bondholders' agreement mentioned in said decree of October 15, 1886, except that said bonds and mortgages are to be executed by this defendant, The St. Louis Ore and Steel Company instead of being executed by a new corporation to
798 be organized for that purpose as in said former bondholders' agreement provided for;

And this defendant further shows to the court, that at a meeting of the board of directors of this defendant, held on the 11th day of January, A. D., 1887, upon due notice a quorum being present, the president of this defendant laid before said board a certified copy of the proceedings of said shareholders' meeting held on December 28, 1886, and also submitted to said board the draft of the several new bonds and securities contemplated by said resolutions of October 23, 1886, and of December 28, 1886, aforesaid; and the said board of

directors having fully considered the same, did at said meeting on January 11, 1887, adopt certain resolutions approving the said draft or form of said new securities, respectively, and authorized and directed the execution of said new bonds and securities, such as contemplated by said resolutions of October 23, 1886, and the delivery thereof, respectively, by the president and secretary of this defendant, and on behalf thereof to such person or persons who may be entitled to receive the same in accordance with the terms of the proposition to the creditors and shareholders of this company set forth in said resolutions of October 23, 1886;

And as to said six bonds for $1,000, commonly called Vulcan bonds, the holders whereof have not accepted the proposition made by this defendant as aforesaid, and the principal whereof became due on April 15, 1885, this defendant is advised that certain moneys now in the hands of Lackland and Edgar, trustees in said Vulcan mortgage, are applicable to the payment thereof, and it is expected that in connection with the orders prayed for in this petition, due provision can be *be* made for the payment of the same;

Defendant further states that from assurances received from
799 its unsecured creditors, it expects to be able to settle all the claims held by them respectively either by income bonds such as mentioned in said bondholders' agreement or by the application thereto of other assets and property of this defendant not embraced in either of said mortgages, provided such orders shall be made as prayed for in this petition;

By reason of the premises this defendant submits to the court that the sale of said mortgaged properties authorized by said decree of October 15, 1886, has become unnecessary; and that no good reason exists why the property of this defendant should remain in the charge and possession of the receiver heretofore appointed in this behalf, except to such extent as may be directed by the court for the purpose of settling the accounts of said receiver, and paying such costs and allowances as the court may order to be paid from the funds in his hands;

Wherefore, said defendant prays that by the further order of this court, so much of said decree of October 15, 1886, may be vacated and set aside as authorizes and directs a sale of the property covered by said mortgages of date May 24, 1875, May 3, 1882, and May 1, 1884, and the 500 shares of stock of the Grand Tower and Carbondale Railroad Company, and the interests of this defendant in the said Bessemer Steel Company, Limited, and the other properties of this defendant in said decree mentioned; and that this defendant be authorized to proceed with and complete the adjustment of its liabilities in the manner contemplated by its said proposition so accepted as aforesaid, by delivering said new bonds and securities in exchange for and satisfaction of said outstanding bonds mentioned in said decree of October 15, 1886, and interest thereon; and
800 that said defendants, Lackland and Edgar and said Farmers' Loan and Trust Company, and said complainant, Olyphant, as trustees respectively in said mortgages, and each of them be authorized to do and perform all things necessary to carry out said

proposition and settlement on their part; and that said Lackland and Edgar be authorized and directed to apply any moneys now held by them for the security of said Vulcan bonds towards payment of said six Vulcan bonds still outstanding as above mentioned; and that suitable allowances be made for counsel fees and other costs and expenses of this suit, and that the receiver appointed in this cause, be directed to pay the same out of the moneys in his hands, and to settle his accounts as such receiver; and that the property and moneys now in the hands of the receiver appointed in this behalf, and belonging to defendant, be restored to it, except so much thereof as the court shall direct to be applied as aforesaid; and for such other and further orders as to the court may seem meet and necessary to enable this defendant to recover possession of its property and resume the management of its business as a corporation.

ST. LOUIS ORE AND STEEL CO.,
By DYER, LEE & ELLIS, *Solicitors.*

EXHIBIT A.

Resolutions adopted at the meeting of directors of the St. Louis Ore and Steel Company, held in New York on October 23, 1886.

It appearing to the directors of this company that the interests alike of its creditors and its stockholders can be fully protected, at greatly less expense to all parties, the pending foreclosure
801 suits terminated without sale, and the company's property released and restored to its possession with highly encouraging prospects for the future, by providing for its indebtedness in the manner below stated; therefore,

Resolved, That this company hereby proposes to each of its creditors, as well *as* the several classes of its bondholders as its general or unsecured creditors, that the agreement for reorganization, heretofore signed by them, be so modified that the several classes of new bonds which, under the said reorganization agreement, were proposed to be issued by a new corporation or corporations, shall be issued by the St. Louis Ore and Steel Company, and shall be accepted by said creditors respectively in lieu of the proposed bonds of such new corporation, but upon the same terms; the bonds so to be issued by this company all to bear date January 1, 1887, but to correspond in other respects with the bonds provided for in said reorganization agreement, and to be secured upon the same property and payable in like manner as therein provided.

The above proposition is made to every creditor, whether said reorganization agreement was signed by him or not within the time therein limited, it being understood that income bonds of this company, dated January 1, 1887, but otherwise such as contemplated by said reorganization agreement, are to be accepted by all bondholders in payment of interest on their bonds unpaid and accrued to said date, and by all the other creditors in payment of their respective demands.

Resolved, That the president of this company is hereby author-

ized and directed to issue, without delay, to the several creditors and stockholders thereof a circular to the above effect, requesting
802 them respectively to assent to such modification of the reorganization agreement as above proposed, and that they give notice of such assent to Messrs. Branch, Burnham and Huse, the purchasing committee named in said reorganization agreement, with authority from each bondholder to said purchasing committee to use and appropriate the bonds now held by them under said reorganization agreement, for his account, in such manner as may be necessary to carry out the proposition above stated.

It is further proposed that in case the above proposition is accepted, the deposit of two dollars per share made with said purchasing committee shall be returned to each stockholder without deduction, all labor and supply claims heretofore allowed in the foreclosure suit having been paid by the receiver, and it being expected to pay the expenses of said suit and of carrying out this proposition, out of the receiver's earnings.

Resolved, That the president and secretary of this company are hereby authorized and directed to cause to be prepared and executed, on behalf of this company, new bonds to bear date January 1, 1887, and to be of the several classes, and of such description respectively, as provided for in said reorganization agreement, to be issued by a new corporation.

Such bonds to be held for exchange with said purchasing committee, when ordered by this board. The president is further directed to have prepared by the counsel of the company and submitted to this board without delay, such further conveyances and instruments as may be necessary for securing said new bonds, as contemplated in the reorganization agreement.

Resolved, That a special meeting of the shareholders of this
803 company is hereby called to be held on Tuesday, the 28th day of December, 1886, at the office of said company, No. 400 north Broadway, in the city of St. Louis, Missouri, for the purpose of submitting to said shareholders, the proposition for the adjustment of the indebtedness of this company in the manner above proposed in the foregoing resolutions, and of obtaining the consent of said shareholders to the issue of new bonds by this company for that purpose; and that a notice of the time and place of said meeting and of the purposes thereof, signed by at least a majority of the directors, be published for sixty days, as required by law.

EXHIBIT B.

St. Louis Ore and Steel Company; general office, Singer building.

ST. LOUIS, *Oct.* 27, 1886.

Notice of Shareholders' Meeting.

Notice is hereby given to all persons concerned, in pursuance of resolutions adopted by the board of directors of the St. Louis Ore and Steel Company, at a meeting of said board held on the 23d day of October, A. D. 1886, that on Tuesday, the 28th day of December,

A. D. 1886, at 9 o'clock in the forenoon of said day, a special meeting of the shareholders of said St. Louis Ore and Steel Company will be held at the general office of said company, in the Singer building, at the northeast corner of Fifth street (or North Broadway) and Locust street, in the city of St. Louis, State of Missouri.

The objects for which said meeting is called, are to obtain the consent of the shareholders of said St. Louis Ore and Steel Company to the execution and issue by said company, of new bonds thereof, all
to bear date January 1, 1887, namely, of mortgage bonds to
804 the amount of ($2,600,000) twenty-six hundred thousand dollars, to be secured by first and second mortgages upon the lands of said company, said mortgage bonds in other respects to correspond in description and security therefor respectively with the mortgage bonds contemplated in and by the agreement for reorganization of said company heretofore executed by bondholders and other creditors and shareholders of said company, and such new or additional deeds of trust upon said lands to be executed by said company as the directors may find necessary for securing said bonds as proposed; also of income bonds such as contemplated by said agreement for reorganization, to an amount not exceeding ($800,000) eight hundred thousand dollars; said mortgage bonds and income bonds respectively to be used in settlement of the bonded and other debts of said company in like manner as contemplated in and by said agreement for reorganization to which reference is hereby made; also to submit to said shareholders for their approval the said resolutions adopted by said board of directors at their said meeting on October 23, A. D. 1886, and the action taken in pursuance thereof looking to the settlement of all outstanding liabilities of said company, the termination of pending litigation and the resumption of its business.

R. M. OLYPHANT,
H. M. OLMSTEAD,
M. DWIGHT COLLIER,
RICHARD M. HOE, JR.,
GEORGE B. DE FOREST,
CHESTER GRISWOLD,
R. S. GRANT,
E. A. HITCHCOCK,
A Majority of the Directors of the St. Louis Ore and Steel Company.

October 23, 1886.

805 EXHIBIT C.

St. Louis Ore and Steel Company.

(*Special Circular to Stockholders.*)

ST. LOUIS, *November* 13, 1886.

DEAR SIR: Referring to the notice for a special meeting of stockholders, to be held at the office of the company in this city,

December 28th proximo, and also to the copy of the reorganization agreement heretofore sent you, I now enclose a copy of the resolutions adopted by your directors on October 23, 1886, mentioned in said notice, and also a copy of the decree, which will come up for final hearing in the United States circuit court for the eastern district of Missouri on the first Monday in January next.

The reorganization contemplates, in the event of a sale of the property, the organization of a new company who will assume and execute the conditions stated in said agreement. But in order to avoid the sacrifice of the stock of the existing company, which would follow a sale of the property under the decree herewith enclosed, and there being no reason why the existing company can not and should not take the place and fulfil the obligations of any new corporation that might be organized under the reorganization agreement, it is proposed at the special meeting of the stockholders, to be held on the 28th of December, to pass such resolutions as will enable the existing corporation to take the place of the proposed new organization, and thereby perpetuate the existing corporation, and save the whole of its outstanding stock.

806 To accomplish this desirable result, it is necessary that stockholders in the present organization shall vote to issue the same bonded indebtedness which a new corporation would necessarily have to issue, and if the present stockholders approve of this plan, it will only be necessary to further secure the assent of the holders of the existing securities to the same. This, I apprehend, there will be no difficulty in accomplishing. Exclusive of past-due interest on the bonded indebtedness, there remains unsatisfied only about $100,000 of general indebtedness, the holders of which having agreed to take income bonds; all other claims having been paid in full to date with interest. The issue of new bonds will amount to $2,600,000, to replace existing bonds, and the amount of income bonds necessary to satisfy past-due interest and unsettled general claims will not exceed $700,000 and less may answer. So that, if the plan now proposed is carried out, the company will recover its property and make a fresh start, free from indebtedness other than the amount of a mortgage and income bonds, the interest on which I feel confident will be met by the income of the property, which never was in so satisfactory a condition with respect to present and future business.

If you approve of the above plan, please sign and return the enclosed proxy, authorizing an affirmative vote at the special meeting to be held on the 28th of December, 1886. To save time and further correspondence, I also enclose a blank proxy, to be used at the annual meeting of this company, to be held in March next, the presumption being that the necessary resolutions will be passed at the special meeting in December next to perpetuate the pres-

807 ent organization. If the proposed plan is carried out, the assessment of two dollars per share paid by you will be returned with your stock in due course.

Please favor me with your reply at the earliest possible date.

Very respectfully, E. A. HITCHCOCK, *President.*

EXHIBIT D.

(*Circular to Bondholders and Creditors.*)

Office of St. Louis Ore and Steel Company, No. 404 North Broadway.

ST. LOUIS, MO., *November* 20, 1886.

——— ———.

DEAR SIR: In accordance with resolutions adopted by the board of directors of the St. Louis Ore and Steel Company, on October 23, 1886, a copy of which resolution is herewith enclosed for your information, I beg to call your attention to the proposition made by this company to its several classes of bondholders and creditors, for the adjustment of its outstanding liabilities, and to request your assent thereto.

You are already familiar with the terms of the agreement for reorganization, signed by yourself and other creditors, to the effect that the several classes of its bonds should be substituted by new bonds, to be such, and secured respectively, as in said agreement stated; past-due coupons and unsecured debts to be paid by income bonds, also as therein provided. You will perceive that the only substantial difference between the proposition now submitted
808 to you, by the enclosed resolutions and that heretofore accepted by you is, that instead of such new bonds being executed by a new corporation, to be formed for the purpose of taking over the property of this company under foreclosure sale, the new bonds now offered are to be executed by this company, but upon the like security as in said agreement for reorganization provided.

It is obviously for the interest of the creditors of this company, that the proposed adjustment of its affairs should be made in this manner, rather than by means of a foreclosure sale and the organization of a new corporation; if only, because by so doing so, the additional expense necessarily attending such sale and the unavoidable delay in forming such new corporation, will be avoided. The security will be the same, and since, by adopting the proposition now submitted, it is confidently believed that no creditor will make objection thereto.

All preferred claims against this company have now been paid or provided for out of the receiver's earnings, which will also suffice to provide for the costs of the pending suit and the expense of the proposed adjustment.

It will be necessary, however, in order to carry out this proposition, that further authority be given by each bondholder to Messrs. Burnham, Branch and Huse, the "purchasing committee," in whose hands are now deposited nearly all of said bonds. At present, such "purchasing committee" are not expressly authorized to use said bonds except in the even- of an actual sale under foreclosure, in which case they are authorized to exchange the same for the bonds of the new corporation formerly contemplated. To carry out

the plan of settlement now proposed, each bondholder should authorize said purchasing committee to exchange the bonds held
809 by them for his account, for the new bonds now proposed to be issued by this company, and to take such further action as will be necessary to complete the new security.

Hence the paper herewith enclosed, by signing which you will signify your acceptance of the proposition now submitted by this company, as above stated, contains the further authority from you to said purchasing committee above mentioned.

Respectfully, your obedient servant,

E. A. HITCHCOCK,
President of the St. Louis Ore and Steel Company.

EXHIBIT E.

——, *November* —, 1886.

E. A. Hitchcock, Esq., president St. Louis Steel Co., St. Louis, Mo.

SIR: In reply to your circular to the bondholders and the circulars of the St. Louis Ore and Steel Company, under date of November 20, 1886, I hereby signify my acceptance of the proposition for an adjustment of the bonded and other indebtedness of said company thereby submitted, as contained in the resolutions adopted by the board of directors of said company on October 23, 1886.

Further replying to said circular, I hereby authorize and direct Messrs. Burnham, Branch and Huse, "the purchasing committee" appointed under the agreement for reorganization heretofore signed by me as a creditor of said company and their successors, to deliver to the St. Louis Ore and Steel Company any and all bond or bonds executed or guaranteed by said company, together with all
810 unpaid coupons thereto belonging, now held by them for my account under said agreement for reorganization; provided that said company shall deliver to said purchasing committee for my account in exchange for the principal of the bonds so surrendered by said purchasing committee, new bonds such as contemplated by said resolutions of October 23, 1886, and income bonds such as contemplated in and by said resolutions in exchange for said past-due coupons. In all other respects such new bonds shall be received and held by said purchasing committee upon the same terms and conditions as expressed in their receipt now held by me for the old bonds, which receipt, duly endorsed, I agree to surrender to said purchasing committee upon its proper accounting to me, my executors, administrators, heirs or assigns, for the new bonds contemplated by said resolution of October 23, 1886, and received by them for me.

And I hereby further authorize said purchasing committee to take whatever further action they may be advised shall be necessary to carry out said proposition of said St. Louis Ore and Steel Company for adjusting its liabilities.

Yours truly, —— ——

811 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered, that on the twenty-ninth day of March, A. D. 1887, the following among other proceedings were had and appear of record in said court, to wit:

ROBERT M. OLYPHANT and FARMERS' LOAN AND TRUST CO. OF N. Y., Complainants,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated.

On reading and considering the report of Ethan A. Hitchcock, receiver of The St. Louis Ore and Steel Company and receiver of The Grand Tower and Carbondale Railroad Company, defendants herein, filed by said receiver on the 28th day of March, instant, and it appearing from said report that in obedience to the order made in this cause on the 7th day of February, 1887, the said receiver did on the 15th day of February, 1887, after reserving the sum of $75,103.76, being the entire cash balance in his hands as such receiver at that date, to meet the obligations of the receivership herein, deliver to said St. Louis Ore and Steel Company the possession of all and singular remaining property and assets of said company situated in the eastern district of Missouri and in the southern district of Illinois there-fore in his charge, possession and custody, as such receiver, the said property and assets being so delivered to said
812 company nevertheless subject to the fulfillment by said St. Louis Ore and Steel Company of all leases, contracts and engagements entered into by said receiver regarding the same, authorized by the orders of this court, and to the performance by said company of its agreement for the adjustment of its liabilities, and that on the 15th day of February, 1887, said receiver also delivered to the Grand Tower and Carbondale Railroad Company the possession of all, and singular the property and assets of said railroad company heretofore held by him as receiver thereof in this behalf, for which property and assets so delivered to them respectively, the said St. Louis Ore and Steel Company and the said Grand Tower and Carbondale Railroad Company have duly receipted to said receiver.

And it further appearing from said receiver's report and from the report of the special master in this cause filed on the 24th day of March, instant and from the testimony returned therewith, that the agreement entered into by said St. Louis Ore and Steel Company with its creditors, being holders respectively of the several mortgage bonds executed or guaranteed by said St. Louis Ore and Steel Company, and mentioned in the bill of complaint in this cause, and in the interlocutory decree entered herein on the 15th day of October, 1886, for the payment of said bonded indebtedness has been exe-

cuted according to the terms of said agreement, and that all and singular the several bonds and classes of bonds mentioned in said bill of complaint, and in said interlocutory decree of October 15, 1886, have been surrende-d by the holders, thereof respectively to said St. Louis Ore and Steel Company for cancel-ation in exchange for new securities accepted in payment of the principal and interest accrued on said bonds respectively as provided for in said
813 agreement, and that the several mortgages mentioned in the bill of complaint herein, to wit: the mortgage executed by the Vulcan iron works, bearing the date May 24, 1875, and the two mortgages executed by said St. Louis Ore and Steel Company, bearing date respectively May 3, 1882, and May 1, 1884, and the mortgage executed by said Grand Tower and Carbondale Railroad Company, bearing date October 1, 1883, have been released and satisfied by deeds of release executed by the trustees in said mortgages respectively.

It is ordered and decreed that the acts and doings of said Ethan A. Hitchcock, receiver in this cause as set forth in said report filed herein on the 18th day of March, instant be and the same are hereby approved and confirmed.

And it further appearing to th- court that all claims heretofore made against said ore and steel company in this behalf, and which were entitled to an equitable lien upon the assets of said company in the hands of said receiver prior to the mortgage sued on, have been paid except certain costs and allowances mentioned in the report of the special master filed on the 24th day of March, instant, and which have been this day ordered to be paid upon the confirmation of said report, and that after payment of maid claims last mentioned out of the balance of $75,103.76, remaining in the hands of said receiver on the 14th day of February, 1887, there will remain in the hands of said receiver a balance in money amounting to $10,921.26, subject to the further orders of this court.

And upon further consideration of the said receiver's report above mentioned, and it appearing that the intervening claim of Schafer, Nochols & Miller against said receiver for about $3,700
814 therein mentioned is still pending, and undetermined in the ancillary suit of said complainant against said St. Louis Ore and Steel Company and others, which suit is pending in the circuit court of the United States for the southern district of Illinois.

It is further ordered that said receiver do retain and set apart out of said balance of moneys in his hands as aforesaid the sum of $4,000, and to be by him accounted for as receiver in said ancillary suit pending in the said United States circuit court for the southern district of Illinois to be disposed of by him as such receiver as may be authorized and directed by said circuit court last mentioned.

And the said Ethan A. Hitchcock, as receiver of said St. Louis Ore and Steel Company and as receiver of said Grand Tower and Carbondale Railroad Company heretofore appointed in this cause, is hereby remitted to said circuit court of the United States for the southern district of Illinois for all further directions in respect to said sum of $4,000, and also for all further directions in respect of

all questions which may have arisen or which may arise concerning the property and assets of said corporations and each of them situated within the said southern district of Illinois and in respect of all further duties of him the said Ethan A. Hitchcock as receiver in that behalf, and the said Ethan A. Hitchcock is authorized and directed to apply to said court for all further orders and directions in respect to the same, and is hereby released and discharged from further accountability to this court in respect to said property and assets last mentioned.

And it further appearing from the said report of said receiver filed herein on the 28th day of March, instant, that the ancillary suit heretofore brought by said complainant, Olyphant,
815 against said St. Louis Ore and Steel Company, to wit: on or about the 29th day of September, A. D. 1887, in the circuit court of the United States for the northern district of Illinois is still pending in said court last mentioned and which said court has jurisdiction thereof and of the parties thereto and of certain assets and property belonging or claimed as belonging to said St. Louis Ore and Steel Company within said northern district of Illinois, and of certain controversies still pending in said court in said ancillary suit between said St. Louis Ore and Steel Company and the North Chicago Rolling Mill Company and the Joliet Steel Company, and said Ethan A. Hitchcock has duly qualified and given bond as such receiver of said St. Louis Ore and Steel Company in said ancillary suit, and as such receiver has collected and holds for account of said cause the sum of $7,197.56, as stated in his said report, and also certain securities or assets which are claimed by said St. Louis Ore and Steel Company as the result of a compromise of certain claims existing in said northern district of Illinois.

It is further ordered and decreed that the said Ethan A. Hitchcock be and he is hereby authorized and directed to apply to said circuit court of the United States for said northern district of Illinois for all further directions as to his duties as receiver in that behalf and in respect of the said sum of $7,197.56 and in respect of the said securities and of the proper disposition thereof; and the said Ethan A. Hitchcock is remitted to said circuit court of the United States for the northern district of Illinois for all further directions in respect of all questions and controversies arising and to arise in said suit therein pending as aforesaid, and is hereby released and discharged from further accountability in this court in respect
816 of any and all questions which have arisen or which may arise concerning the said money, securities and other assets belonging or claimed as belonging to the said St. Louis Ore and Steel Company in said northern district of Illinois and in respect of his duties as receiver appointed by said court in said cause.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said District.

Be it remembered, that on the twenty-eighth day of March, A. D. 1887, there was filed in the clerk's office of said court a certain receiver's report in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

ROBERT M. OLYPHANT *et al.*, Complainants,
vs.
ST. LOUIS ORE & STEEL COMPANY *et als.*, Defendants. } 2394 and 2507. In Equity. Consolidated Cause.

Now comes Ethan A. Hitchcock, receiver of the St. Louis Ore and Steel Company, heretofore appointed and qualified in the above-entitled cause, and respectfully reports and shows to the court:

817 That in obedience to the order of this court in this behalf, made on the 7th day of February, 1887, the undersigned, as such receiver, forthwith gave directions for, and on the 14th day of February, 1887, caused to be made a complete inventory of all and singular the property and assets of said St. Louis Ore and Steel Company, situated within the State of Missouri, and remaining in his charge as such receiver on that day, and also a like inventory of all the property and assets of said St. Louis Ore and Steel Company in his charge as such receiver on said day, within the southern district of Illinois; except the lands belonging to said company and permanent improvements thereon in the said State of Missouri and the said State of Illinois; and also closed his accounts as such receiver of said company, on and as of said 14th day of February, 1887.

That the undersigned, as receiver of the Grand Tower and Carbondale Railroad Company, also caused to be made a like inventory of the property and assets of said railroad company, heretofore in his charge as said receiver, on said 14th day of February, 1887, except as to the lands occupied by said railroad company and the permanent improvements thereon.

That on the 15th day of February, 1887, the undersigned as receiver of said St. Louis Ore and Steel Company reserved and retained from the cash in his hands as such receiver, the sum of ($75,103.76) seventy-five thousand one hundred and three dollars and seventy-six cents, being the entire amount of money on that day in his hands and custody as receiver of said company; the said sum being in the opinion of the undersigned adequate to meet all obligations of the receivership.

818 That on said 15th day of February, 1887, the undersigned Ethan A. Hitchcock, being also the president of said St. Louis

Ore and Steel Company, took over and resumed on behalf of said St. Louis Ore and Steel Company, from the possession of such receiver, all and singular the lands, improvements, fixtures, personal property and other assets of said St. Louis Ore and Steel Company, except the said sum of $75,103.76 in money above mentioned, as well *as* the property of said company situated in the State of Missouri, as the property thereof situated in the southern district of Illinois, and has ever since been, and now is in possession thereof as such president of the St. Louis Ore and Steel Company, and on behalf thereof.

The undersigned as president and on behalf of said St. Louis Ore and Steel Company has receipted to himself as receiver of said company for the property thereof in Missouri and southern district of Illinois, for all and singular the property of said St. Louis Ore and Steel Company so delivered to said company by said receiver as above stated on February 15, 1887. A copy of said receipts is hereto annexed, except that said original receipts call for and refer to said inventory above mentioned, which original inventory it is desired to retain in the office of said St. Louis Ore and Steel Company, for use and reference in conducting the business thereof; but if it be necessary to file copies of said inventory in this cause, the undersigned prays leave to file such copies thereof within such time as the court may designate.

The undersigned receiver further states, as to the said Grand Tower and Carbondale Railroad Company, that said St. Louis Ore and Steel Company was ascertained by the decree of this court made on October 15, 1886, to be the equitable owner of five hun-
819 dred shares of the capital stock of said railroad company; that the undersigned Ethan A. Hitchcock was on and before the 15th day of February, 1887, one of the directors of said railroad company, and as such was authorized to receive possession of the property of said company from the custody of this court:

That on said 15th day of February, 1887, said undersigned Ethan A. Hitchcock, on behalf of said Grand Tower and Carbondale Railroad Company also took over and resumed, from the possession of himself as receiver of said railroad company in this case, all and singular the property and assets of said railroad company so inventoried on, and as of the 14th day of February, 1887, and that on said last-mentioned day all and singular the property of the Grand Tower and Carbondale Railroad Company heretofore in the custody and charge of the undersigned as receiver has been in the possession of and operated by the proper officers and agents of said railroad company; the undersigned receiver being advised by counsel that under said order of February 7, 1887, in this behalf he was authorized to deliver possession to said railroad company of the said property thereof, all of which is situated in the southern district of Illinois. And for said property of said railroad company, the undersigned as such director of and on behalf of said railroad company has also executed a receipt to himself as receiver, a copy whereof is herewith filed, referring to said inventory of said railroad property above mentioned. Said last-mentioned inventory

also remains in the office of said St. Louis Ore and Steel Company for use and reference, and if the court shall require a copy thereof to be filed in this cause, the undersigned receiver prays leave to file such copy herein within such time as the court shall designate.

820 The undersigned receiver further states that the said sum of ($75,103.76) seventy-five thousand one hundred and three dollars and seventy-six cents, retained by him as aforesaid as receiver of said St. Louis Ore and Steel Company is the only property heretofore in his possession or custody, either as receiver of said St. Louis Ore and Steel Company, or as receiver of said Grand Tower and Carbondale Railroad Company, except as hereinafter stated in respect of a certain fund in the northern district of Illinois, and prays the court for such further orders as may be just in respect of the disposition by him as such receiver of said sum of money.

The undersigned receiver further states that, on or about July 28, 1884, said complainant Olyphant brought in the circuit court of the United States for the southern district of Illinois, a suit against said St. Louis Ore and Steel Company and others, ancillary to this suit; in which ancillary suit the undersigned was also appointed receiver, and the orders made by this court in this cause, so far as applicable to property in said southern district of Illinois, have from time to time been adopted by said circuit court for said southern district; that said ancillary suit is still pending, and the undersigned is still responsible to said circuit court for the southern district of Illinois as such receiver in said ancillary suit; that the only matter undetermined in said ancillary suit is a certain intervening claim of Shafer, Nichols and Miller for about $3,700, all other matters in controversy in said suit having been disposed of, and all costs accrued therein having been paid by the undersigned as receiver of this court and included in his accounts filed in this court.

The undersigned prays that by the order of this court he
821 may be remitted to said circuit court of the United States for the southern district of Illinois for all further directions in respect of any and all property situated in said southern district of Illinois belonging to said St. Louis Ore and Steel Company and the said Grand Tower and Carbondale Railroad Company, and that he may be discharged from further accountability to this court in respect of all such property; and that he may be authorized to set aside and reserve out of said balance of $75,103.76 retained by him as aforesaid the sum of $4,000, to be applied to the payment of said Shafer, Nichols & Miller claim, or such part thereof, if any, as may be established, and to the payment of any further cost which may accrue in said ancillary suit in said southern district of Illinois, the balance of said $4,000 to be disposed of by him as may be directed by said United States circuit court for said southern district of Illinois and without further liability therefor as receiver of this court.

The undersigned further states that in obedience to said order of February 7, 1887, he did, as receiver in this behalf, within thirty days from the date of said order, to wit: on the 25th day of February, 1887, file in this cause his accounts as such receiver up to and

including said 14th day of February, 1887, being the day on which as aforesaid the undersigned receiver closed his accounts as such and delivered as aforesaid to St. Louis Ore and Steel Company and said Grand Tower and Carbondale Railroad Company all the property and assets of said companies respectively, except said sum of $75,103.76, and except the fund hereinafter mentioned in the northern district of Illinois; and that, according to his said accounts as made up to and closed on said 14th February and filed on February 25, 1887, said balance of $75,103.76 and no more remained in his hands as such receiver.

822 That his said accounts so filed on February 25, 1887, were referred, under the standing order of this court in this cause, to the special master appointed herein, and have been by said master examined and passed as correct; that on March 16, 1887, said special master filed his report upon said accounts filed by the undersigned on February 25, 1887, showing said balance in hand of $75,103.76, whereby said special master reported that said accounts were correct and recommended the approval thereof; that more than five days have now elapsed since said special master's report was filed, and no exceptions having been filed thereto, said special master's report stands confirmed and said accounts of the undersigned stand approved by this court.

The undersigned receiver further states that all intervening claims against said St. Louis Ore and Steel Company which have from time to time been allowed in this cause have been paid by him out of the funds in his hands under the orders of this court, except the following claims, for the sums and allowed respectively at the dates below mentioned, but each of which claims was adjudged by this court not to be entitled to an equitable lien upon the assets of said company in the hands of the undersigned receiver prior to the mortgage sued on; said claims are as follows:

In favor of Boatman's saving bank, St. Louis, Mo.:

Allowed May 24, 1886 ..... $5,301 42

With interest thereon at six per cent. from July 19, 1884, until paid.

Allowed May 24, 1886 ..... 10,400 00

With interest thereon at six per cent. from July 12, 1884, until paid.

Neither of said claims being entitled to an
823 equitable lien.

In favor of Rob't M. Parks *et al.*, trustees of Mechanics' bank:

Allowed June 21, 1886 (balance on Cherrie & Co.'s acceptance) 10,472 27

With interest at six per cent. till paid, but no equitable lien therefor.

In favor of the Lackawanna Iron and Coal Company:

Allowed September 22, 1886, the following claims:

Damages on rail contracts $23,001 75

With interest at six per cent. from November 30, 1884.

For rails delivered but not paid for 22,040 30

With interest on said sum at six per cent. from July 20, 1884.

Balance on rails delivered but not paid for (Cherrie & Co.'s acceptance as collateral) 36,000 00

With interest at six per cent. from June 20, 1884.

None of the above claims are entitled to an equitable lien.

The undersigned is informed and believes and so states that the Lackawanna Iron and Coal Company has agreed with said St. Louis Ore and Steel Company to accept new income bonds from said company in payment of the above allowances.

Also, that negotiations are pending between the said Boatmen's savings bank, and said trustees of the Mechanics' bank, both of St. Louis, with a view to a settlement of said claims by the ac-
824 ceptance by said creditors of new securities therefor and the release of said judgments above mentioned.

The undersigned receiver further states that so far as he has any knowledge or information there is no other claim pending against said St. Louis Ore and Steel Company or against said Grand Tower and Carbondale Railroad Company, defendants herein either within the eastern district of Missouri, or in the southern district of Illinois, which would in any event be payable out of any property or assets in the hands of the undersigned receiver except as to the said amount, if any, which may be allowed in favor of Schaefer, Nichols & Miller upon their intervening claim now pending in the United States circuit court for said southern district of Illinois, as above mentioned.

The undersigned receiver further states to the court that besides the ancillary suit above mentioned, brought by said complainant Olyphant against said St. Louis Ore and Steel Company on July 28, 1884, in the United States circuit court for the southern district of Illinois, said Olyphant also brought another ancillary suit against said St. Louis Ore and Steel Company in the United States circuit court for the northern district of Illinois at Chicago, Illinois, on or about the 29th of September, 1884, which suit is still pending; in which suit the undersigned E. A. Hitchcock, receiver, was also appointed receiver of said St. Louis Ore and Steel Company, and accepted said appointment and qualified and has given bond as such receiver of said court in the sum of $50,000; that there were and are certain demands existing in said northern district of Illinois in favor of said St. Louis Ore and Steel Company against the North Chicago Rolling Mill Company and against Cherrie &
825 Co., and the assigned estate of said Cherrie & Co., and also

certain claims existing in said northern district of Illinois on behalf of the Joliet Steel Company and the North Chicago Rolling Mill Company, both being corporations under the laws of Illinois doing business in said northern district of Illinois, and in respect of which claims said two corporations last mentioned have intervened in said ancillary suit at Chicago.

That on May 24, 1886, the undersigned filed and presented to this court in this cause, his petition setting forth in detail the proceedings had up to that date in said ancillary suit at Chicago and the nature of said claims and demands above mentioned, and prayed this court for instructions as to his duties in that behalf.

That on hearing said petition this court, to wit: by its order in this case made on May 24, 1886, to which order the undersigned prays leave to refer, did remit the undersigned receiver to the said United States circuit court for the northern district of Illinois for further instructions and authority to act in respect of the said several claims and demands above mentioned as well those in favor of as those against said St. Louis Ore and Steel Company, and did authorize and direct the undersigned receiver to submit to said United States circuit court for the northern district of Illinois all questions which might arise touching his duty in respect of assets belonging or which might be claimed as belonging to said St. Louis Ore and Steel Company in said northern district of Illinois and in respect of all demands or rights of action on behalf of said St. Louis Ore and Steel Company or which may have accrued to said receiver as such in respect of any assets of said St. Louis Ore and Steel Company in said northern district of Illinois, including any and
826 all demands against any person or persons residing or found within said northern district of Illinois.

That in pursuance of said orders and authority the undersigned receiver did apply to receive from said United States circuit court for the northern district of Illinois instructions and authority to compromise said claims of said St. Louis Ore and Steel Company against Cherrie & Co. and has compromised the same by accepting new securities therefor upon terms approved by said United States circuit court for the northern district of Illinois, to wit: in the month of August, 1886; and since said date the undersigned, as receiver of said United States circuit court for the northern district of Illinois in said ancillary suit has collected on account of said new securities the sum of ($7,197.56) seven thousand one hundred and ninety-seven dollars and fifty-six cents, which he now holds for account of said ancillary cause, but which sum the undersigned receiver has now as a separate fund, subject to the jurisdiction of said United States circuit court for the northern district of Illinois, and has now included the same in his accounts rendered to this court, being advised by counsel so to do.

The undersigned respectfully shows to this court that the said United States circuit court for the northern district of Illinois has jurisdiction and control of said claims and demands in favor of and against said St. Louis Ore and Steel Company in said northern district of Illinois, and of said ancillary suit, and of the undersigned

as receiver appointed therein, and prays the court that in respect as well of said sum of $7,197.56 so collected and held by him as aforesaid, as in respect of all assets belonging or claimed as belonging to said St. Louis Ore and Steel Company, and all claims and
827 demands against the same existing in said northern district of Illinois, he may, by the final order of this court in this cause be directed and authorized hereafter to account and to receive instructions from said United States circuit — for the northern district of Illinois alone, and may be released and discharged from any further responsibility in respect thereof in or to this court.

The undersigned further states to this court that so much of its said order made in this cause on the 7th day of February, 1887, as authorized the said St. Louis Ore and Steel Company, and the several trustees in the mortgages mentioned in the bill of complaint in this cause to proceed with and complete the adjustment of the liabilities of said St. Louis Ore and Steel Company in the manner in said order referred to, has been completely carried out, that is to say:

That on or about the 8th day of March, 1887, at the city of New York, the undersigned Ethan A. Hitchcock, as president of said St. Louis Ore and Steel Company met Cyrus B. Burnham, chairman of the purchasing committee of bondholders so called at the office of the Farmers' Loan and Trust Company, of New York, and then and there on behalf of said St. Louis Ore and Steel Company delivered to said Burnham, who was then and there the authorized agent in that behalf of each and every of the holders of each and every of the several bonds and classes of bonds of said St. Louis Ore and Steel Company, and said Grand Tower and Carbondale Railroad Company which are mentioned in the bill of complaint in this cause, all the new mortgage and income bonds of said St. Louis Ore and Steel Company which said bondholders respectively had agreed to receive and accept in satisfaction of all,
828 and singular the said outstanding bonds of said St. Louis Ore and Steel Company, and said Grand Tower and Carbondale Railroad Company mentioned in said bill of complaint; and the said several bondholders by said Burnham, their authorized agent in that behalf did then and there accept from said St. Louis Ore and Steel Company all and singular the said new mortgage bonds and income bonds in exchange for and in satisfaction and extinguishment of each and every of the outstanding bonds mentioned in said bill of complaint, and all interest accrued thereon and remaining unpaid, and did then and there surrender to said St. Louis Ore and Steel Company, all and singular said outstanding bonds and all unpaid coupons thereto belonging, that is to say:

One thousand bonds of the Vulcan iron works each for one thousand dollars, dated May 24, 1875, secured by first mortgage of that date:

One thousand first-mortgage bonds of the St. Louis Ore and Steel Company, each for one thousand dollars, dated May 3, 1882, secured by mortgage of that date:

Seven hundred bonds of the Grand Tower and Carbondale Rail-

road Company, five hundred thereof for five hundred dollars each, and two hundred being for five hundred dollars each, dated October 1, 1883, secured by said railroad company's mortgage of that date, said bonds being also guaranteed by said St. Louis Ore and Steel Company, and secured by the mortgage sued on in this cause, dated May 1, 1884.

Together with all unpaid coupons belonging to said bonds or any of them.

Which bonds and every of them were so delivered and surrendered to said St. Louis Ore and Steel Company for cancellation by it as being fully paid and satisfied.

829 And at the same time there were delivered to said St. Louis Ore and Steel Company, and said Grand Tower and Carbondale Railroad Company respectively deeds of release from the trustees in the several mortgages mentioned in the bill of complaint in this cause, wherein and whereby said trustees respectively acknowledged satisfaction and extinguishment of said several bonds above mentioned, and released the property in said mortgage above mentioned respectively from the lien thereof.

For all which the undersigned prays leave to refer the court to the report of the special master in this cause, filed on the 24th day of March, inst., and to the testimony reported and filed therewith.

And the undersigned states to the court that by reason of the premises the several bonds of said St. Louis Ore and Steel Company and of said Grand Tower and Carbondale Railroad Company mentioned in the bill of complaint in this cause, and the several mortgages securing the same also referred to in said bill of complaint have and each of them has been satisfied and released; and there is no longer any reason why the receivership in this cause should continue except so far as relates to the disposition of said sum of $75,103.76 retained by the undersigned receiver to meet the obligations of said receivership in pursuance of said order of February 7, 1887; and the undersigned receiver prays the court that such further orders be made in this behalf as may be necessary for the winding up of said receivership, and for the disposition of said moneys still remaining in hands as such receiver, and for his discharge as such receiver and for the release of said undersigned receiver and his sureties as such from any further liability or obligation in this behalf.

E. A. HITCHCOCK, *Receiver.*

830 (Copy.)

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States for the said Eastern District of Missouri.

ROBERT M. OLYPHANT *et al.* } In Equity. Consolidated
vs. } Cause. Nos. 2394 and
ST. LOUIS ORE AND STEEL COMPANY. } 2507.

The St. Louis Ore and Steel Company hereby acknowledges that in pursuance of the order of said United States circuit court for the eastern district of Missouri entered in the above-entitled cause, on the 7th day of February, A. D. 1887, it, said St. Louis Ore and Steel Company, by the president thereof, has received from Ethan A. Hitchcock, receiver in said cause, the possession and control of all and singular the property and assets of said company heretofore in the possession of said receiver under the orders of said circuit court, and not disposed of by said receiver pursuant to the orders of said court in said cause, except the sum of ($75,193.76) seventy-five thousand one hundred and — three dollars and seventy-six cents, money on hand retained by said receiver pursuant to said order of February 7, 1887, as against the obligations of said receivership; the said property and assets so delivered to said St. Louis Ore and Steel Company by said receiver, including, as well, the possession of the lands of said company and improvements thereon, situated in the city of St. Louis and in the counties of Jefferson, Madison, Iron and St. Francois, in the State of Missouri, and also in the county of Jackson and State of Illinois, as also the fixtures, ma-
831 chinery, supplies on hand, merchandise, ore and coal on hand, and other property of every description heretofore in the possession of said receiver, and not disposed of, as aforesaid, and for which said receiver was liable, to account to said St. Louis Ore and Steel Company, under the said order of February 7, 1887, on this 15th day of February, 1887, as of which date this receipt is given.

The said property above mentioned, in the State of Missouri, other than the lands, permanent improvements and fixtures thereon, is the same property mentioned and described in a certain inventory, made by said receiver, of the personal property belonging to the "Pilot Knob department" of said St. Louis Ore and Steel Company, made and dated on the 14th day of February, 1887, the original of which inventory is in the possession of the St. Louis Ore and Steel Company, and is written on eighty-one pages; it being understood that if said receiver shall be required by the said circuit court of the United States for the eastern district of Missouri to file in the above cause a copy of said inventory, the said St. Louis Ore and Steel Company will furnish such copy for that purpose.

The said property in Illinois above mentioned is the same which

is described in a certain other inventory of the "Grand Tower department" of said St. Louis Ore and Steel Company, also made and dated February 14, 1887, and which original inventory also remains in the possession of said St. Louis Ore and Steel Company, and of which last-mentioned inventory said company agrees to furnish the said receiver a copy for filing in said cause, and also a copy for filing in the ancillary suit of Olyphant against St. Louis Ore and Steel Company *et als.*, in the United States circuit court for the southern district of Illinois, if thereunto required.

832 And the said St. Louis Ore and Steel Company hereby acknowledges that in and by the delivery to it by said Ethan A. Hitchcock, receiver of the property above mentioned, the said receiver has complied with so much of said order of February 7, 1887, as relates to the surrender and delivery to said St. Louis Ore and Steel Company by said receiver of the property thereof as therein directed.

It is understood and agreed that all and singular the said lands, tenements and other property whatsoever above receipted for have been received by said St. Louis Ore and Steel Company from said receiver, and are by said company to be held and used, subject to the due fulfillment by said company of all leases, contracts or engagements entered into by said receiver regarding said property or any part thereof heretofore authorized by the orders of said United States circuit court for the eastern district of Missouri, or of the United States circuit court for the southern district of Illinois, and subject to the performance by said company of the agreements by it made for the adjustment of its liabilities, referred to in said order made in the above-entitled cause on February 7, 1887, so far as any such lease, contract or agreement remains to be performed, the said St. Louis Ore and Steel Company hereby undertaking to perform and carry out the same respectively; and the said receiver to make formal assignment to said company of any such contract still outstanding, if and whenever thereto required by said company or by any party to such contract.

In witness whereof, this receipt and acknowledgment is executed and delivered for and on behalf of said St. Louis Ore and Steel Company, at the city of St. Louis, Missouri, as of the 15th

833 day of February, A. D. 1887, by Ethan A. Hitchcock, the president thereof, thereunto duly authorized.

For THE ST. LOUIS ORE AND STEEL COMPANY,

(Signed) E. A. HITCHCOCK, *President.*

(Copy.)

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States for the said Eastern District of Missouri.

ROBERT M. OLYPHANT *et al.* } In Equity.
vs. } Consolidated Cause.
ST. LOUIS ORE AND STEEL COMPANY. } Nos. 2394 and 2507.

The Grand Tower and Carbondale Railroad Company, one of the defendants in the above-entitled cause, hereby acknowledges to have received as of the 15th day of February, 1887, from Ethan A. Hitchcock, receiver of said railroad company duly appointed in said cause, the possession and control of all and singular the lands and tenements, railroad track, buildings, depots and other property of said railroad company, including also the locomotives, cars and other rolling stock, also the tow-boat Mab, barges, wharf-boat and other river stock heretofore in the charge and custody of said Ethan A. Hitchcock, as receiver of said railroad company duly appointed in the above-entitled cause, the said Hitchcock being also receiver of said railroad company appointed in that certain ancillary suit pending in the United States circuit court for the southern district of Illinois, between the said Robert M. Olyphant, as complainant, and The St. Louis Ore and Steel Company and others as defendants.

The said property, other than the lands, railroad and
834 buildings above mentioned, is the same which is more fully described in a certain inventory thereof made and dated February 14, 1887, to which reference is hereby made; the original of said inventory remaining in the possession of the St. Louis Ore and Steel Company, of St. Louis, Missouri, which is the equitable owner of the capital stock of said railroad company; it being understood and agreed that if the said receiver shall be required to file either in the circuit court of the United States for the eastern district of Missouri or in the circuit court of the United States for the southern district of Illinois, a copy of said inventory, in either of said cases above mentioned, said copy shall be furnished to him by said railroad company for that purpose.

The said property has been delivered to said Grand Tower and Carbondale Railroad Company by said receiver in pursuance of a certain order made in the above-entitled cause on the 7th day of February, 1887, to which reference is hereby made; and the said Grand Tower and Carbondale Railroad Company hereby acknowledges satisfaction of all claims on its part against said receiver for the surrender and delivery of any and all property of said railroad company heretofore in the custody or charge of said receiver and not disposed of by him under the orders of the United States circuit courts above mentioned, or either of them.

In witness whereof, this receipt and acknowledgment is executed

at the city of St. Louis, Missouri, as of the 15th day of February, 1887, by the said Grand Tower and Carbondale Railroad Company by Ethan A. Hitchcock, who is one of the directors thereof and is also president of said St. Louis Ore and Steel Company.

(Signed) GRAND TOWER & CARBONDALE RAILROAD,
By E. A. HITCHCOCK, *Director*.

835 Documentary testimony introduced by the defendants upon the reference of the cause of said intervenor to the master, as follows, to wit:

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered, that on the third day of September, A. D. 1888, there was filed in said court, in cause Nos. 2394 and 2507 of Robert M. Olyphant *et al. v.* St. Louis Ore and Steel Company, a certain petition of the receiver for order of final discharge, in words and figures following, to wit:

836 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for said Eastern Division of said Eastern District of Missouri.

ROBERT M. OLYPHANT and FARMERS' LOAN & TRUST COMPANY, Complainants,
vs.
ST. LOUIS ORE & STEEL COMPANY and Others, Defendants.
} Consolidated Cause. Nos. 2394 & 2507.

Now comes Ethan A. Hitchcock, heretofore appointed receiver in said above-entitled cause, and presents this his petition for a discharge as such receiver and respectfully shows to the court:

That on the 29th day of March, A. D. 1887, were made by this court and duly entered in said consolidated cause two certain orders for which the undersigned prays leave to refer to the records thereof, and which orders were in substance respectively as follows, to wit:

1. An order confirming and approving the acts and doings of said receiver, undersigned, in said cause, as set forth in the report of said receiver filed therein on the 28th day of March, A. D. 1887; by which order the said receiver was also directed to retain and set apart out of a certain balance in money remaining in his hands, subject to the further orders of this court, as in said order mentioned, the sum of ($4,000) four thousand dollars to be by him accounted for as receiver in the ancillary suit therein mentioned pending in

the United States circuit court for the southern district of
837 Illinois, and the said receiver was by said order remitted to said circuit court of the United States for the southern district of Illinois for all further directions in respect of said sum of $4,000, and also in respect of all questions which may have arisen or may arise concerning the property and assets of the corporations defendant in said suit situated within said southern district of Illinois and in respect of all further duties of him the said receiver in that behalf and was thereby released and discharged from further accountability to this court in respect of said property and assets last mentioned; and by said order of this court made on March 29, 1887, the said receiver, undersigned, was also directed to apply to the circuit court of the United States for the northern district of Illinois, to wit: in a certain other ancillary suit pending in said court and in said order mentioned, for all further directions in respect of all questions arising or to arise in said ancillary suit last mentioned, and especially in respect of a certain other sum of ($7,197.56) seven thousand one hundred and ninety-seven dollars and fifty-six cents, mentioned in said order and in said receiver's report filed March 28th, the said receiver being by the said order of this court also released and discharged from further accountability to this court in respect of any and all questions which have arisen or may arise concerning the said money securities and other assets belonging or claimed as belonging to said St. Louis Ore and Steel Company in said northern district of Illinois, and in respect of his duties as receiver appointed by said court last mentioned in said ancillary suit therein pending.

2. A certain other order made and entered on said March 29, 1887, by which was confirmed the report in said cause on March
838 16, 1887, by John Wickham, Esq., special master therein, passing and approving the accounts of the undersigned receiver filed in said cause on February 25, 1887, and recommending the allowance of said accounts; the said order 29th March, 1887, further directing that the accounts of said receiver in said report mentioned be, and the same were thereby approved.

And by said last-mentioned order made in this cause on March 29, 1887, it was further ordered that the final report concerning the accounts of the said undersigned receiver which was filed in the clerk's office on March 24, 1887, by the said John Wickham, Esq., special master, do stand confirmed.

And it was further ordered that out of a certain balance of ($75,103.76) seventy-five thousand one hundred and three dollars and seventy-six cents then remaining in the hands of said receiver undersigned, as shown by said master's final report so confirmed as aforesaid, the said receiver pay to the parties respectively entitled thereto certain costs and allowances mentioned in said report of said special master, filed on March 24, 1887, the said costs and allowances amounting in all to the sum of ($60,743.87) sixty thousand seven hundred and forty-three dollars and eighty-seven cents, and that in addition thereto said receiver pay to the parties entitled thereto certain other sums in said order respectively mentioned, together

amounting to the further sum of ($3,438.53) three thousand four hundred and thirty-eight dollars and fifty-three cents; making a total amount of ($64,182.40) sixty-four thousand one hundred and eighty-two dollars and forty cents so ordered to be paid by said receiver as aforesaid out of said balance of money, to wit: $75,103.76 remaining in his hands as aforesaid; which payments being made there would remain in the hands of said receiver a balance
839 in money amounting to ($10,921.26) ten thousand nine hundred and twenty-one dollars and twenty-six cents, out of which last-mentioned balance the said receiver, undersigned, was directed to retain and set apart said sum of $4,000 to be disposed of by him as might be directed by the United States circuit court for the southern district of Illinois, in accordance with said order of this court made on March 29, 1887, first above mentioned.

And the undersigned receiver respectfully shows to the court that in pursuance of said order of March 29, 1887, last above mentioned he did without any delay pay to the said parties entitled thereto as in said order directed the several sums therein directed to be paid to them being in gross the sum of $64,142.40; the several sums so ordered to be paid and which were paid by the undersigned receiver as aforesaid being as follows:

To E. T. Allen, solicitor		$4,543 87
R. M. Olyphant, trustee		1,200
Turner, Lee & McClure, solicitors		2,100
Hough, Overall & Judson		2,100
Dyer, Lee & Ellis		3,000
Hitchcock, Madill & Finkelnburg		8,500
Noble & Orrick		4,500
Farmers' Loan & Trust Co., trustee		600
R. J. Lackland, trustee		600
T. B. Edgar, trustee		600
E. A. Hitchcock, receiver		15,000
Special master		3,000
Purchasing committee		15,000
The above sums making a total of		60,743 87

840 Also the following further sums mentioned in said order to wit:

Costs in said cause in this court	$1,300 43	
Purchasing committee for carrying bonds to New York and bringing back new bonds, etc.	857 25	
Purchasing committee on account — legal services	500	
Purchasing committee for stationery, etc.	100	
		2,757 68

Also, on account of costs, fees and allowances in said ancillary suit in the United States circuit court for the southern district of Illinois, mentioned in said master's report filed in said cause March 24, 1887, and in said order of March 29, 1887, as follows:

Costs due John A. Jones, clerk	$40 85	
Allowance to John Wickham, Esq., special master in said court and cause	500	
Fee of Allen, Brown & Brown, solicitors	100	
		$640 85

Making the total amount paid by the undersigned receiver in pursuance of said last-mentioned order of March 29, 1887 ..... $64,142 40

And being in full of the total amount, say $64,182.40, so
841 ordered to be paid by the undersigned, except the item of ($40) forty dollars mentioned in said master's report filed March 25, 1877, as "additional court costs" in said ancillary suit in the United States circuit court for the southern district of Illinois, being the amount estimated for costs thereafter to accrue, but not yet accrued or payable in said cause.

The undersigned receiver further states that after making the payments above mentioned there remained in his hands as receiver, subject to the further orders of this court, out of the gross sum of $75,173.76 in said order mentioned, a balance of $10,961.36.

The undersigned further reports that said balance of $10,961.36 has been in part applied and disposed of by him as follows:

1. By setting apart therefrom the sum of $4,000 to be by him accounted for as receiver in said ancillary suit pending in the United States circuit court for the southern district of Illinois, in pursuance of said order of this court made on March 29, 1887, first hereinbefore mentioned, and by which order the undersigned was remitted and directed to apply to the said circuit court for the southern district of Illinois, for all further directions in respect of the same; leaving a balance in the hands of the undersigned receiver of $6,961.36.

2. By payment out of said balance of $6,961.36 last mentioned of the following further sums for account of the St. Louis Ore and Steel Company to the persons, and at the dates mentioned below, to wit:

1887.		
May 30.	To Mrs. Mary G. Brown, intervenor under order in said consolidated cause made on May 20, 1887	$750
842 May 30.	To Allen & Monney, stenographers	64
June 7.	To A. P. Selby, clerk, certified copies order March 29	4

1887.		
June 29.	In satisfaction of judgment for damages in George W. Sale *v.* St. Louis Ore & Steel Co., No. 64322, room 5, circuit court, city of St. Louis	$762 50
July 1.	George E. Leighton, one-half of six months' rent of property leased from Missouri Zinc Company used by receiver for storage, etc.	300
	Said payments last mentioned amounting in all to	$1,880 50

and leaving still in the hands of the undersigned receiver in this cause, the sum of ($5,080.86) five thousand and eighty dollars and eighty-six cents.

The undersigned further respectfully shows the court that the several sums so paid by him as aforesaid for account of said St. Louis Ore and Steel Company were, and so far as he is advised or believes, are all and the only claims or demands accrued or outstanding against said St. Louis Ore and Steel Company during his said receivership, or which were payable out of any moneys which came into his hands as such receiver:

That on February 15, 1887, as set forth in the report filed in this cause by the undersigned on March 28, 1887, the under-
843 signed receiver, after reserving said sum of $75,103.76 in money above mentioned, delivered to said St. Louis Ore and Steel Company the possession of all and singular, the remaining property and assets of said company theretofore in his charge as such receiver, which action was approved by said order of this court made on March 29, 1887, first above mentioned; at which date, February 15, 1887, said company resumed and has ever since been carrying on the business thereof as formerly, and has promptly paid all claims against it accruing from time to time, including all semi-annual payments of interest since then accrued upon the new mortgage bonds issued by said company as also mentioned in said report, the undersigned filed March 18, 1887, and in said order of March 29, 1887:

The undersigned further states that all costs of this cause accrued to this date have been paid as well as all allowances and other sums therein ordered to be paid, and that he knows no reason why the said last-mentioned balance of $5,080.86 should not be paid over to said St. Louis Ore and Steel Company, or the proper officers thereof.

Wherefore, the undersigned prays that by the further and final order of this court in this cause, he may be directed to account for and pay over to said St. Louis Ore and Steel Company said sum of ($5,080.86) five thousand eighty dollars and eighty-six cents above mentioned, less such costs and allowances as may remain to be taxed in this cause, and that the undersigned may thereupon be finally discharged as such receiver and released from all further accountability as such, and for such further orders as to the court may seem meet and requisite in this behalf.

HITCHCOCK, MADILL & FINKELNBURG,
Solicitors for E. A. Hitchcock, Receiver, etc.

844 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the 29th day of March, A. D. 1887, the following among other proceedings were had and appear of record in said court, to wit:

ROBERT M. OLYPHANT and FARMERS' Loan and Trust Co. of N. Y., Complainants,
vs.
ST. LOUIS ORE AND STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated.

In re intervening petitions of Lackawanna Iron and Coal Company, Mechanics' bank, Robert M. Parks, *et al.*, trustees.

Now come the intervenors, The Lackawanna Iron and Coal Company, Mechanics' Bank and Robert M. Parks *et al.*, trustees, by Ed. Cunningham, Jr., their solicitor, and in open court acknowledge satisfaction of the decrees entered in their favor herein.

And afterwards, to wit: on the 15th day of April, A. D. 1887, the following proceedings were had and appear of record in said cause, to wit:

845 ROBERT M. OLYPHANT and Farmers' Loan & Trust Co. of N. Y., Complainants,
vs.
ST. LOUIS ORE & STEEL CO. *et al.*, Defendants. } 2394 & 2507. Consolidated.

Now come the Jupiter iron works by its solicitor and in open court acknowledge- satisfaction of the decree heretofore entered in its favor herein.

(Endorsed:) Filed M'ch 28, 1889. Wm. H. Bradley, clerk.

846 Afterward, to wit, on the sixteenth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the petition of the North Chicago Rolling Mill Company being set for hearing this

day, now comes on to be heard upon said petition, the answer thereto, and proof taken upon the issue made thereby, and, after hearing the arguments of counsel in part, the further hearing on said matters is postponed to a future day.

847 Afterward, to wit, on the seventeenth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause again comes on to be heard upon the petition of the North Chicago Rolling Mill Company, answer thereto, and proof taken, and after hearing the concluding arguments of counsel the court takes the same under advisement.

848 Afterward, to wit, on the eighth day of July, 1889, Judge Gresham delivered an opinion in said entitled cause; which said opinion is in the words and figures following, to wit:

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Intervening petition of the North Chicago Rolling Mill Company.

George Willard, for intervenor; Hutchinson & Luff, for respondent.

GRESHAM, *J.*:

On December 1, 1883, the North Chicago Rolling Mill Company, an Illinois corporation, and the St. Louis Ore and Steel Company, a Missouri corporation, entered into a written contract whereby the former company agreed to manufacture and deliver to the latter company 18,000 tons of steel rails, at $35 per ton, in monthly installments, during the year 1884. About the same time Cherrie & Co., of Chicago, agreed with the Chicago company to purchase from the St. Louis company and deliver to the Chicago company 100,000 tons of Pilot Knob iron ore. Cherrie & Co. failed on July 3, 1884, not having fully performed their contract, and the St. Louis
849 company agreed to sell and deliver to the Chicago company a quantity of ore of the same class at the same price. Ore was delivered under this contract. The failure of Cherrie & Co. appears to have embarrassed the St. Louis company, and on July 21, 1884, in a suit brought against that company in the circuit court of the United States for the eastern district of Missouri, a receiver

was appointed, who took charge of the company's assets and undertook to carry on its business.

On the same day the Joliet Steel Company, an Illinois corporation, brought a suit in attachment against the St. Louis company and garnished the Chicago company, claiming that it was then indebted to the St. Louis company in the sum of $19,000 for ore sold and delivered under the contract already referred to.

The Chicago company filed a plea of set-off, containing different items of indebtedness due to it from the St. Louis company, all of which were allowed, except a claim for unliquidated damages growing out of the non-fulfillment of the contract of December 1, 1883, the court holding that a claim of that nature could not be allowed as a set-off in a suit at law. A judgment was entered against the Chicago company as garnishee in favor of the St. Louis company for $16,000 for the use of the Joliet company, and the Chicago company then filed its intervening petition in this case.

After setting out the proceedings in the suit in garnishment the petition avers that the St. Louis company is insolvent and prays that the damages resulting from the non-fulfillment of the rail contract be ascertained and set off against the judgment entered against the petitioner as garnishee.

After the intervening petition was filed the St. Louis company effected a compromise with its creditors, and the suit against it in the Federal court at St. Louis was dismissed and its property
850 was restored to its possession. The judgment against the Chicago company as garnishee was for money due for pig-iron bought from the St. Louis company and the claim of the former company is for unliquidated damages growing out of the failure of the latter company to receive rails under the contract of December, 1883, a contract having no connection with the one upon which the Chicago company was garnished.

When the latter company was served as garnishee no part of the claim now urged as a set-off had accrued.

The Chicago company then had no right of action for recovery of that claim or any part of it. Indeed, it was then uncertain whether that company would make or lose money by the further performance of the rail contract. Without ruling upon other questions discussed by counsel, it is sufficient to say that the claim for unliquidated damages growing out of the failure of the St. Louis company to receive rails under the rail contract after the failure of that company and after the commencement of the suit in attachment and the service of the writ of garnishment upon the Chicago company was properly rejected by the court in the trial of the action at law and cannot now be set off against the judgment rendered against the garnishee. The intervening petition is dismissed without prejudice to the right of the Chicago company to prosecute an action against the St. Louis company.

851 Afterward, to wit, on the tenth day of July, 1889, came the North Chicago Rolling Mill Company, by its solicitor, and filed in said clerk's office its petition for a rehearing in said entitled

cause; which said petition is in the words and figures following, to wit:

In the matter of intervening petition of North Chicago Rolling Mill Co.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court Thereof.

ROBERT M. OLYPHANT *vs.* ST. LOUIS ORE AND STEEL CO. *et al.* } In Chancery. Bill in Equity. No. 19241.

In the matter of the intervening petition of the North Chicago Rolling Mill Company.

Petition for Rehearing.

The inte-venor, North Chicago Rolling Mill Company, respectfully petitions for a rehearing in the matter aforesaid for the following reasons, to wit:

For the reason that the question whether the intervenor has sustained its claim for damages remains undecided.

In support of said petition the following suggestions are respectfully submitted:

First. The question of right of set-off, the only question now decided herein, is not important to either party except in the event the intervenor has sustained its claim of breach of contract and resulting damages.

Second. Full proof upon the question of breach of contract and resulting damages has been taken upon both sides and appears in the record.

Third. The court has full power to determine said question by an examination of the proofs directly by the court itself or
852 through the medium of a reference and report upon the proofs by a master in chancery or through the medium of a verdict of a jury taken upon proper issues to be directed for trial.

Fourth. Several years' time has elapsed since the filing of said intervening petition, and several thousand dollars of costs and expenses have been incurred in such of the proceedings herein as relate solely to the said question of breach of contract and resulting damages, which time and which costs and expenses will be lost to the parties unless said question shall be determined in this proceeding.

Fifth. The respondent, St. Louis Ore and Steel Company, has not nor has its receiver interposed any objection to a determination herein of the said question.

Sixth. The court of original jurisdiction of said cause, to wit, the circuit court of the United States for the eastern district of Missouri, by order entered May 24, 1886, specially remitted said receiver to this the circuit court of the United States for the northern district

of Illinois for instruction and authority in respect of the subject-matter of said intervening petition. See page 358, Printed Record.

Seventh. By order of this court entered May 16th, 1887, at the instance of the said respondent, St. Louis Ore and Steel Company, and without any prejudice to the rights of said intervenor, the said E. A. Hitchcock, receiver therein, was discharged. Printed Record, page 68.

It will greatly and unduly prejudice, if not utterly destroy, the interest of the intervenor in respect to the said question of breach of contract and resulting damages if it shall be deprived of its right to prosecute said question to judgment in this proceeding, the said respondent, St. Louis Ore and Steel Company, being a foreign corporation and having no agents in this district nor any other
853 property in this district, as your petitioner believes, except that which is claimed as a set-off herein.

Whereas the interests of said respondent, St. Louis Ore and Steel Company, cannot be unduly prejudiced by having said question prosecuted herein to judgment, and, said company having voluntarily come into this jurisdiction and entered its personal appearance in this proceeding, the adjudication may very justly to both parties be made complete.

Ninth. The ancillary proceeding aforesaid afforded the intervenor the only means in this district by or through which it could have its claim of breach of contract and resulting damages adjudicated at the time of the filing of its intervening petition herein. Said ancillary proceeding was intended as a means of adjudicating claims of the kind in question. The intervenor has therefore sought its remedy through a proper channel.

Respectfully submitted.

GEO. WILLARD,
Sol'r for Petitioner.

(Endorsed:) Filed July 10, 1889. Wm. H. Bradley, clerk.

854 Afterward, to wit, on the eighteenth day of November, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

ROBERT M. OLYPHANT *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, THE Grand Tower and Carbondale Railroad Company, Rufus J. Lackland, Timothy B. Edgar, Henry Hitchcock, and The Farmers' Loan and Trust Company and	In Chancery. Bill.
THE NORTH CHICAGO ROLLING MILL COMPANY *vs.* THE ST. LOUIS ORE AND STEEL COMPANY, ETHAN A. Hitchcock, Receiver; The Joliet Steel Company, The Iron Mountain Company, and David K. Ferguson.	Intervening Petition.

Now comes the said intervening petitioner, by George Willard, its solicitor, and the said St. Louis Ore and Steel Company, Ethan A. Hitchcock, receiver, and David K. Ferguson, respondents, by Hutchinson & Luff, their solicitors, also come, and this
855 cause coming on to be heard upon the said intervening petition the answers thereto, replications to said answers, and the proofs taken herein, and the court, having heard the said pleadings and proofs and the argument of counsel, and being fully advised, doth find that at the time of the commencement of the said attachment suits of the said Joliet Steel Company against the said St. Louis Ore & Steel Company, to wit, on the twenty-first day of July, 1884, the said St. Louis Ore & Steel Company was not indebted to the said petitioner for damages for the non-receipt of rails under said agreement between said petitioner and said St. Louis Ore & Steel Company, dated the first day of December, A. D. 1883, set out in the said petition, the court, in the trial of the action at law, having allowed as a set-off in favor of the North Chicago Rolling Mill Company all demands against the St. Louis Ore & Steel Company, except said claim for unliquidated damages; and it is therefore ordered, adjudged, and decreed that the said intervening petition be, and the same is hereby, dismissed for want of equity without prejudice to the right of said petitioner to bring suit against it, said St. Louis Ore & Steel Company, for damages for the non-performance of said agreement, and thereupon the said petitioner moves that the said injunction heretofore granted herein be continued, and prays, also, for an appeal to the
856 Supreme Court of the United States; which motion and prayer are allowed upon the filing of an appeal bond in the sum of twenty-five thousand dollars, with surety, to be approved by the court within ten days, to operate as a supersedeas.

857 Afterward, to wit, on the twenty-sixth day of November, 1889, there was filed in said clerk's office an appeal bond in

said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, the North Chicago Rolling Mill Company, a corporation of the State of Illinois, as principal, and O. W. Potter and Richard C. Hannah, as sureties, of the county of Cook and State of Illinois, are held and firmly bound unto the St. Louis Ore & Steel Company and David K. Ferguson, of St. Louis, Missouri, and to whomsoever else it may concern in the penal sum of twenty-five thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally and firmly, by these presents.

Witness our hands and seals this twenty-third day of November, A. D. 1889.

The condition of the above obligation is such that whereas the said St. Louis Ore & Steel Company and the said David K. Ferguson did, on the 18th day of November, A. D. 1889, in the circuit court of the United States for the northern district of Illinois, recover a decree against the above-bounden North Chicago Rolling Mill Company dismissing its intervening petition in a cer-
858 tain cause therein pending, wherein Robert M. Olyphant is complainant and the said St. Louis Ore & Steel Company and others are defendants, from which said decree the said North Chicago Rolling Mill Company has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said North Chicago Rolling Mill Company shall duly prosecute its said appeal with effect and moreover pay the amount of a certain judgment rendered against it as garnishee on the 13th day of January, A. D. 1886, for the sum of sixteen thousand four hundred and seventy-three dollars and twenty-eight cents in a certain cause lately pending in the said circuit court of the United States for the northern district of Illinois, wherein The Joliet Steel Company was plaintiff and the said St. Louis Ore & Steel Company was defendant, with interest thereon, and the costs of said intervening petition in case the said decree shall be affirmed in said Supreme Court and the said judgment shall not before that time have been reversed, then the above obligation to be void; otherwise to remain in full force and virtue.

[Corporation Seal.]

NORTH CHICAGO ROLLING MILL COMPANY,
By O. W. POTTER, *President.*

Attest: RICH'D C. HANNAH, *Sec'y.*

ORRIN W. POTTER. [SEAL.]
RICHARD C. HANNAH. [SEAL.]

Approved.
W. Q. GRESHAM.

(Endorsed:) Filed Nov. 26, 1889. Wm. H. Bradley, clerk.

859 Afterward, to wit, on the fourteenth day of December, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

ROBERT M. OLYPHANT
vs.
ST. LOUIS ORE AND STEEL COMPANY *et al.* } In Chancery.

Now comes David K. Ferguson, by Hutchinson & Luff, his solicitors, and presents to the court here his supplemental bill asking leave to be made a party defendant to the petition of the North Chicago Rolling Mill Company, ordered to stand as an original bill in this cause; and upon reading and filing the said bill of said David K. Ferguson, and on motion of his solicitors, it is ordered that said David K. Ferguson be, and he is hereby, made a party defendant to said petition of said North Chicago Rolling Mill Company, and that he have leave to appear, prove, and defend his rights and interests in and to the judgments described in his said bill, and that the testimony already taken herein may be read in evidence for or against said David K. Ferguson with the same effect as it might have been read for or against the Joliet Steel Company or said
860 St. Louis Ore and Steel Company had no assignment of said judgments been made.

And it is further ordered that this order shall not prejudice the rights of said North Chicago Rolling Mill Company against said St. Louis Ore and Steel Company or said Joliet Steel Company. This order is entered *nunc pro tunc* as of May 2, 1888.

861 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in *in* said court in the cause wherein Robert M. Olyphant is complainant and The St. Louis Ore and Steel Company, The Grand Tower and Carbondale Railroad Company, Rufus J. Lackland, Timothy B. Edgar, Henry Hitchcock, and The Farmers' Loan and Trust Company *et al.* are defendants, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this twenty-seventh day of June, 1890.

WM. H. BRADLEY, *Clerk.*

862 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To the St. Louis Ore and Steel Company, a corporation of the State of Missouri, and David K. Ferguson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1890, pursuant to an order praying an appeal from the decree entered upon the intervening petition of the North Chicago Rolling Mill Company, filed in the cause hereinafter mentioned, such order allowing said appeal being filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Robert M. Olyphant was complainant and the St. Louis Ore and Steel Company *et al.* were defendants, to show cause, if any there be, why the said decree and record of the cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, circuit judge, this 10th day of July, in the year of our Lord one thousand eight hundred and ninety.

WALTER Q. GRESHAM.

We accept service of the above citation this 14th day of July, A. D. 1890.

ST. LOUIS ORE & STEEL COMPANY,
DAVID K. FERGUSON,
By HUTCHINSON & LUFF, *Their Sol'rs.*

863 [Endorsed:] Supreme Court of the United States. Robert M. Olyphant *vs.* St. Louis Ore and Steel Company *et al.* Citation to October term, A. D. 1890.

864 In the Supreme Court of the United States, October Term, 1890.

NORTH CHICAGO ROLLING MILL COMPANY, Appellant, *vs.* ST. LOUIS ORE AND STEEL COMPANY and DAVID K. FERGUSON, Appellees.	Appeal from the Circuit Court of the United States for the Northern District of Illinois.

And now comes The North Chicago Rolling Mill Company, the appellant, by James C. Hutchins and Adams A. Goodrich, its attorneys, and says that in the record and proceedings and in the entering and enrolling of the decree aforesaid there is a manifest error in this, to wit:

First. The court below erred in entering and enrolling the said decree appealed from.

Second. The court below erred in finding that the said St. Louis Ore and Steel Company was not indebted to the appellant for damages for the non-receipt of rails under the agreement referred to in said decree.

Third. The court below erred in refusing to enjoin the collection of the judgment rendered in the action at law referred to in said decree.

Fourth. The court below erred in refusing to adjudicate and determine the extent of the damage suffered by the appellant by reason of the failure of the St. Louis Ore and Steel Company upon the contract for the sale of the rails referred to in said decree.

865 Fifth. The court below erred in refusing to find the amount of the damages as set forth in the preceding assignment of error, and also erred in refusing to set off against the judgment in the action at law before referred to such damage.

Sixth. The court below erred in refusing to ascertain the amount of the appellant's damage by reason of the breach by the St. Louis Ore and Steel Company of the contract for rails referred to in excess of said judgment, and also erred in failing to render a decree therefor.

Seventh. The court below erred in refusing to act upon the petition for a rehearing filed by the appellant.

Eighth. The decree of the court below is inequitable.

By reason whereof the appellant prays that the errors mentioned be corrected and that the decree of the court below be reversed, in order that justice may be done to the appellant.

NORTH CHICAGO ROLLING MILL COMPANY,
By JAMES C. HUTCHINS AND
ADAMS A. GOODRICH, *Its Attorneys.*

Endorsed on cover: Case No. 14,177. N. Illinois C. C. U. S. No. 197. The North Chicago Rolling Mill Company, appellant, *vs.* The St. Louis Ore and Steel Company and David K. Ferguson. Filed September 26, 1890.

FILED,
DEC 14 1893
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

No. 197.

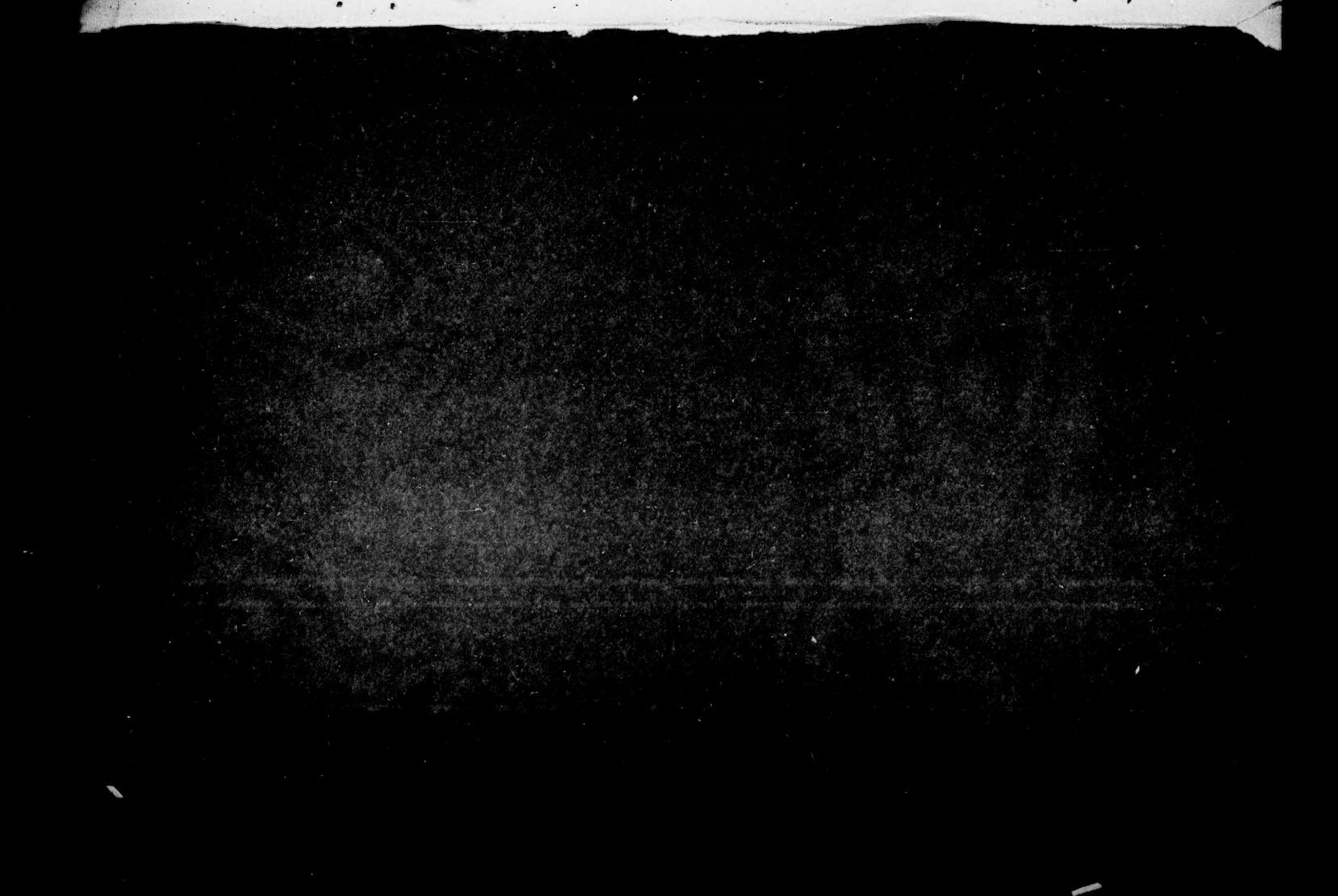
NORTH CHICAGO ROLLING MILL COMPANY, *Appellant*,
vs.
ST. LOUIS ORE & STEEL COMPANY and DAVID K. FERGUSON, *Appellees.*

Appeal from United States Circuit Court for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

E. PARMALEE PRENTICE,
CHARLES S. HOLT,
OF COUNSEL.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No. 197.

NORTH CHICAGO ROLLING MILL COMPANY,
Appellant,
vs.
ST. LOUIS ORE & STEEL COMPANY and DAVID K. FERGUSON,
Appellees.

Appeal from United States Circuit Court for the Northern District of Illinois.

STATEMENT OF FACTS.

This appeal brings before the court for review a decree of the Circuit court dismissing the intervening petition of the North Chicago Rolling Mill Company in the suit of *Olyphant* v. *The St. Louis Ore and Steel Company, et al.* For convenience, the intervenor and appellant will be spoken of as the Chicago Company, and the St. Louis Ore and Steel Company as the St. Louis Company.

The record is somewhat voluminous, but the questions involved in this appeal lie in a small compass, and the facts which we conceive to be material are as follows:

In 1883 the Chicago company and the St. Louis company were both miners of iron ore and manufacturers of railroad

rails, pig metal, etc., the former having its principal office in Chicago, Illinois, and the latter having its principal office in St. Louis, Missouri. At the same time the firm of Cherrie & Company were acting as agents and brokers for the St. Louis company, and, as such, had from time to time sold to the Chicago company large quantities of the St. Louis company's product of ore and pig metal.

On December 1, 1883, the two companies entered into a written agreement by which the Chicago company was to manufacture 18,000 tons of steel rails for the St. Louis company, to be delivered free on board cars at Chicago in about equal amounts during each month of the year 1884. The price of $35 per gross ton was to be paid by the St. Louis company on the 10th day of each month for all rails delivered during the previous month, and the failure of the St. Louis company to furnish cars for the prompt shipment of rails from Chicago was not in anywise to relieve the St. Louis company from prompt payment for the rails on the 10th of the month. The other provisions of this contract, if deemed material, may be found at page 278 of the printed record.

In the same month, December 26, 1883, Cherrie & Company contracted in writing to deliver to the Chicago Company 50,000 tons of Pilot Knob iron ore, to be mined and shipped from the Pilot Knob mine, situated in the State of Missouri, and owned and operated by the St. Louis company. Delivery was to be made at the rate of from one to seven thousand tons per month, as required by the Chicago company, and payments were to be made on the 15th of each month for the previous month's deliveries. (Rec., 143.)

This agreement was made by Cherrie & Company in pursuance of an agreement between them and the St. Louis company, which is shown at page 142 of the record; and by letter dated January 19, 1884, the St. Louis company ex-

pressly guaranteed the deliveries and the quality of the ore referred to in the Cherrie contract. (Rec., 282.)

Performance of these two contracts was duly entered upon by the respective parties, and continued up to July 4, 1884, when Cherrie and Company became financially involved and made an assignment for the benefit of creditors. Thereupon the St. Louis company assumed the Cherrie contract for its own account, and shipments of ore were received by the Chicago company and settled for direct with the St. Louis company, independent of the assignee of Cherrie and Company. Such shipments and receipts of ore were continued by the parties up to July 21, 1884.

In addition to these two contracts, which may be conveniently spoken of as the rail contract and the ore contract, there were various dealings between the parties, so that on July 10, 1884, when payment was due for the June deliveries of rails, the Chicago company had in its possession certain quantities of ore and pig metal, the exact amount of which had not yet been ascertained, and settlements for which had not been made.

On the following day, July 11th, the St. Louis company, by letter, informed the Chicago company of its inability to pay for the June deliveries of rails, and asked

"as a special favor if you won't let the matter rest for a little while, you having in your possession funds of ours from pig metal shipped you, also the July ore that is arriving and which is of course for the account of our company." (Rec., 303.)

The record discloses no reply to this letter. On the next day the St. Louis company wrote again, expressing doubt about its ability to pay its debts promptly, and suggesting an arrangement by which the Chicago company should manufacture certain rails for the receivers of the Wabash company and look to the latter direct for payment. The president of

the Chicago company telegraphed on the 14th, that he preferred a personal interview, and with this the matter seems to have dropped for the time.

Affairs were in this condition when, on July 21, 1884, a bill was filed in the United States Circuit court for the Eastern District of Missouri, by Robert M. Olyphant against the St. Louis company and others, alleging the insolvency of the St. Louis company and praying for the foreclosure of a second mortgage upon its property.

Under this bill Mr. E. A. Hitchcock was appointed receiver and took charge of the company's business, and on September 24th of the same year, an ancillary bill was filed in the Circuit court for the Northern District of Illinois, and Mr. Hitchcock was thereunder appointed receiver of the assets in Illinois.

On the day of the appointment of the receiver in Missouri, two creditors of the St. Louis Company, viz: the Iron Mountain Company of St. Louis, and Joliet Steel Company of Illinois, brought suits in attachment in the Superior court of Cook county, Illinois, and caused the Chicago company to be summoned as garnishee. The Iron Mountain company's suit has disappeared from the proceedings, by a settlement of that company's claims, pending the suit. The Joliet company removed its two suits to the United States Circuit court for the Northern district of Illinois, where one of them was subsequently dismissed. The proceedings in the other suit of the Joliet company were as follows: On October 18, 1884, the garnishee not having answered the interrogatories filed, a conditional judgment was entered against the garnishee in accordance with the Illinois practice, and a writ of *scire facias* was issued and served on the Chicago company, returnable at the December term, 1884. To this writ the Chicago company made answer November 5, 1884, and a supplemental answer February 25, 1885, setting forth in a general way the transactions between itself and the

St. Louis company, admitting an indebtedness for ore and pig metal amounting to $44,916.82, and setting up counter claims to the amount of $56,807.59. Replications were filed denying all the items of this counter-claim and denying the right of set-off; and upon the issues thus formed the case went to trial before a jury at the January term, 1886. The court allowed all the items of the counter-claim except the sum of $28,390.16, which was claimed as damages for the failure of the St. Louis company to carry out the rail contract by receiving and paying for the rails therein specified. This left a balance in favor of the St. Louis company against the Chicago company of $16,473.28, for which the jury, by direction of the court, found a verdict. Upon that verdict judgment was entered January 13, 1886, for the use of the Joliet Steel Company, and all others entitled to share therein.

Execution on this judgment was stayed in order to allow the Chicago company to file its intervening petition in the chancery suit of *Olyphant* v. *The St. Louis Company*, and by order in that suit, entered January 18, 1886, the petition was filed. It is found at page 150 of the record, and was afterwards amended as shown at page 329. It sets out the rail and ore contracts; the default of the St. Louis company in regard to the rail contract, and the resulting damage; the garnishee proceedings; the denial of petitioner's right to set up its claim for damages in said proceedings, under the strict rules of the common law; the insolvency of the St. Louis company, and the necessity to the petitioner of equitable relief. The prayer is that the alleged damages may be ascertained and set off against the judgment in the attachment suit, and that the petitioner may have a decree for any balance over the amount of said judgment, and for an injunction against the collection of the judgment, and for other relief.

To this petition were first interposed pleas to the jurisdiction of the court, which were overruled. General demurrers were

then filed by the St. Louis company and the attaching creditors, which demurrers, after argument, were likewise overruled. Answers and replications were then filed, and the case was referred to a master. Evidence upon the merits of the claim was introduced, and after amendments to the answer of the St. Louis company a re-reference was had, upon which copies of the proceedings and papers in the St. Louis case were introduced in evidence as bearing upon the issue of the insolvency of the St. Louis company at the time the petition was filed.

Two intermediate steps may properly be mentioned, though neither of them seems material on this appeal. In 1887 the St. Louis company filed a plea setting forth a compromise of the questions underlying Olyphant's bill of complaint, and the plea was sustained and the bill dismissed, but without prejudice to the merits of the intervenor, the Chicago company.

On May 3, 1888, David K. Ferguson filed a supplemental bill, averring that he was the purchaser and assignee of the Joliet Steel Company's judgment, and praying leave to appear and defend his rights, and by order of court he was allowed to do so, but without prejudice to the rights of the Chicago company.

It appears that the St. Louis company succeeded in effecting a compromise with its creditors, and this resulted in the dismissal of the bill as above stated. Upon the dismissal of the original bill in Missouri, the receiver was in express terms remitted to the Illinois court for instructions in respect to the claim involved in this appeal. The matter was brought on for hearing before Judge Gresham, who filed a short opinion, shown at page 461 of the record, reciting the proceedings and stating his conclusions of law as follows:

"When the Chicago company was served as garnishee, no part of the claim now urged as a set-off had accrued. The Chicago company then had no right of action for recovery of that claim or any part of it. Indeed, it was then uncertain whether that company would make or lose money by the

further performance of the rail contract. Without ruling upon other questions discussed by counsel, it is sufficient to say that the claim for unliquidated damages growing out of the failure of the St. Louis company to receive rails under the rail contract after the failure of that company, and after the commencement of the suit in attachment, and the service of the writ of garnishment upon the Chicago company, was properly rejected by the court in the trial of the action at law, and cannot now be set off against the judgments rendered against the garnishee."

A petition for rehearing by the Chicago Company (Rec. 463) having been overruled, a final decree was entered November 18, 1889, the substantial part of which is as follows:

"The court doth find that at the time of the commencement of the said attachment suits of the said Joliet Steel Company against the said St. Louis Ore and Steel Company, to wit: on the 21st day of July, 1884, the said St. Louis Ore and Steel Company was not indebted to the said petitioner for damages for the non-receipt of rails under said agreement between said petitioner and said St. Louis Ore and Steel Company dated the 1st day of December, 1883, set out in the said petition, the court in the trial of the action at law having allowed as a set-off in favor of the North Chicago Rolling Mill Company all demands against the St. Louis Ore and Steel Company except said claim for unliquidated damages; and it is therefore ordered, adjudged and decreed that the said intervening petition be and the same is hereby dismissed for want of equity, without prejudice to the right of said petitioner to bring suit against it, said St. Louis Ore and Steel Company, for the non-performance of said agreement." (Rec., 465.)

The injunction previously granted was continued pending appeal, and the bond was duly filed.

The only controverted question of fact involved in this appeal seems to be whether the St. Louis company was or was not insolvent when the intervening petition was filed. Such insolvency was expressly alleged in the petition, and in the original answer was not denied. The amendment to the answer (Rec., 328), does contain a formal denial of insolvency, but the record sufficiently meets this denial. Aside from the

failure of the Circuit court to find solvency and the total of proof to that effect, it appears that the filing of the Olyphant bill was brought about by the inability of the St. Louis company to pay its maturing obligations in the ordinary course of business. This is, of itself, insolvency.

Further, the report of the master at St. Louis shows a deficiency of assets, as compared with liabilities, of $66,000 and over, outside of bonds and interest secured. (Rec., 404.) This report of the master was confirmed.

Moreover, it appears that, pending the proceedings, more than one petition was filed by the receiver for leave to pay dividends on indebtedness. This is a significant earmark of insolvency and inability to pay the entire amount of indebtedness.

The fact that pending the litigation the company may have succeeded in compromising its indebtedness, and thus restoring itself to a position of nominal solvency, cannot affect the equities arising from the insolvency which undoubtedly existed when the petition was filed. We shall assume, therefore, in our further discussion of the case, that the St. Louis company was insolvent when the petition of the Chicago company was filed.

That the St. Louis company is a non-resident of the State of Illinois, and has no assets within the state except its claim against the intervening petitioner, sufficiently appears from the entire record, and we suppose will not be disputed.

BRIEF.

I.

THE CHICAGO COMPANY HAD A VALID CLAIM FOR DAMAGES FOR BREACH OF THE RAIL CONTRACT, WHICH CLAIM EXISTED WHEN THE ATTACHMENT WAS BEGUN AND WAS COMPLETE BEFORE THE INTERVENING PETITION WAS FILED.

Argument under this head is based on the facts.

II.

THE CHICAGO COMPANY HAD THE RIGHT IN EQUITY TO SET OFF ITS CLAIM FOR DAMAGES AGAINST ITS INDEBTEDNESS TO THE ST. LOUIS COMPANY AND TO ENJOIN THE COLLECTION OF THE JUDGMENT IN ATTACHMENT.

(*a.*) A bill will lie to enjoin the collection of a judgment, on any ground of good conscience which could not have been set up at law, or which the complainant was prevented from setting up, without his own negligence.

Crim v. *Handley*, 94 U. S., 652.
Embry v. *Palmer*, 107 U. S., 3.
Knox Co. v. *Harshman*, 133 U. S., 154.

(*b.*) In equity any cross-demand may be enforced by way of set-off, if there are peculiar circumstances warranting the interposition of equity.

The *insolvency* of the party against whom the set-off is claimed, is sufficient ground for equitable interference.

Schuler v. *Israel*, 120 U. S., 506.
Leeds v. *Marine Ins. Co.*, 6 Wheat., 565.
Lindsay v. *Jackson*, 2 Paige, 581.
Pond v. *Smith*, 4 Conn., 302.
Robbins v. *Hawley*, 1 Monr., 194.
Gay v. *Gay*, 10 Paige, 369.
Henrichsen v. *Reinbach*, 27 Ill., 295.
Raleigh v. *Raleigh*, 35 Ill., 512.
Hall v. *Kimball*, 77 Ill., 161.
C., D. & V. R. R. Co. v. *Field*, 86 Ill., 270.
Doane v. *Walker*, 101 Ill., 628.
Davis v. *Milburn*,, 3 Iowa Rep., 163.
Waterman on Set-off, § 396.
Tuscumbia R. R. v. *Rhodes*, 8 Ala., 206.
Wrays Admr. v. *Furniss*, 27 Ala., 471.
Rothschild v. *Mack*, 115 N. Y., 1.
Richards v. *La Tourette*, 119 N. Y., 54.
Keightley v. *Walls*, 27 Ind., 384.
Wulschner v. *Sells*, 87 Ind., 75.
Layobourne v. *Seymour*, (Minn.) 54 N. W. Rep., 941.

Non-residence of the party will likewise be ground for equitable interference.

Quick v. *Lemon*, 105 Ill., 578.
Taylor v. *Stowell*, 4 Met. (Ky.), 175.
Robbins v. *Hawley*, 1 Monr., 18.
Edminson v. *Baxter*, 4 Hayw., 112.
Davis v. *Milburn*, 3 Iowa, 163.
Forbes v. *Cooper*, (Ky.) 11 S. W. Rep., 24.

It is no objection that the claim sought to be set off is unliquidated.

Lindsay v. *Jackson*, 2 Paige, 581.

Gay v. *Gay*, 10 *id.*, 309.
Davis v. Milburn, 3 Iowa, 163.
Doane v. *Walker*, 101 Ill., 628.
Wray's Admrs. v. *Furniss*, 27 Ala.
Edminson v. *Baxter*, 4 Hayw, 112.
Forbes v. *Cooper*, 11 S. W. Rep., 24.

Nor that the claim is not due, or that it accrues to the complainant after judgment at law.

C., D. & V. R. R. v. *Field*, 86 Ill., 272.
Hall v. *Kimball*, 77 Ill., 161.
Keightley v. *Walls*, 27 Ind., 384.

And other cases *supra*.

III.

EQUITY HAVING PERSONAL JURISDICTION OF THE PARTIES WILL NOT ONLY OFF-SET THE CLAIM FOR DAMAGES AGAINST THE JUDGMENT AT LAW, BUT WILL DO COMPLETE JUSTICE BY RENDERING A DECREE FOR THE EXCESS IN FAVOR OF THE CHICAGO COMPANY.

1 Pom. Eq. Jur., 160.
McGowin v. *Remington*, 12 Pa. St., 63.
Jones v. *Waggoner*, 7 J. J. Marsh, 141.
Davis v. *Milburn*, 3 Iowa Rep., 163.

IV.

INCIDENTAL MATTERS.

(*a.*) The law of recoupment and set-off in Illinois is peculiarly liberal.

Babcock v. *Trice*, 18 Ill., 420.
Peck v. *Brewer*, 48 Ill., 54.
Scott v. *Kenton*, 81 Ill., 96.

Adjustment of demands by counter-claim rather than by independent suit is everywhere favored.

Ry. Co. v. *Smith*, 21 Wall., 255.

(*b.*) The attaching creditor takes no better right than the St. Louis company.

Drake on Attach., § 458.
Schuler v. *Israel*, *supra*.

(*c.*) The law and practice of the state, in respect to set off, control the Federal courts within such state.

Partridge v. *Ins. Co.*, 15 Wall., 580.
West v. *Aurora City*, 6 Wall., 139.

ARGUMENT.

I.

THE CHICAGO COMPANY HAD A GOOD CLAIM FOR DAMAGES FOR BREACH OF THE RAIL CONTRACT.

The decree finds only one fact as the basis for dismissing the petition, viz: that *at the time the attachment suit was commenced*, the St. Louis company was not indebted to the Chicago company for damages for the breach of the rail contract. We shall spend very little time over the question whether the St. Louis company did violate its contract before the attachment suits, for we conceive that to be comparatively an immaterial question. If it is material, however, there is abundant evidence to show: *first*, that the June deliveries of rails were not paid for on July 10th, in whole or in part; *second*, that there was no agreement that the ore and pig metal received by the Chicago company should be applied in satisfaction of the June rail account; *third*, that even if there had been such agreement, it would not have reached far enough to wipe out the indebtedness, since the testimony of Mr. Garrison on behalf of the St. Louis company shows that the ascertained amount of material delivered by the St. Louis company and unpaid for by the Chicago company on July 10, 1884, fell short of the amount of the Chicago company's deliveries of rails in the month of June to the extent of about four thousand dollars. (Rec., 267, 268.) It afterward turned out that 500 tons of the pig iron included in this estimate had previously been pledged to the Boatman's Savings Bank of St. Louis, for $7,500! (Rec., 305, 307.) The total deficiency was therefore in excess of $11,000, even on that theory.

The letter of July 11th, above referred to (Rec., 303), is a

virtual acknowledgment of the St. Louis company's understanding that the June rails were to be paid for on July 10th, *in cash*, and not by way of set-offs or balancing of accounts. In that letter no request is made that the Chicago company take the ore and pig metal, then delivered or arriving, in payment for the June rails. The request was simply that the matter of payment "*should rest for a little while.*"

There was, therefore, a clear breach of the rail contract by the St. Louis company on July 10th, and even if the material delivered by the St. Louis company were applied in payment for the June rails, still there was an unpaid balance on July 10th of the difference between $21,536 and $17,550, or nearly $4,000, increased, as above shown, by $7,500, the amount of the lien held by the Boatman's Savings Bank on 500 tons of the iron. (Testimony of Garrison, *supra.*)

As to the subsequent and repeated defaults on the part of the St. Louis company upon the rail contract, it will be noticed that under the second and eleventh clauses of the contract the 18,000 tons of rails were to be delivered in about equal amounts each month during 1884, and that notwithstanding the rails might not be shipped, by reason of default in the furnishing of cars by the St. Louis company, settlements were still to be made in cash on the 10th of the succeeding month, and the non-delivery of cars was not to relieve the St. Louis company from the duty of prompt payment. Moreover, under the third clause the rails were to be made according to certain instructions as to weight and form, which were to be furnished by the St. Louis company. They could not, therefore, be made up in advance of instructions. No such instructions were given until July 25th, when an order was telegraphed for 200 tons of rails for the Missouri Pacific, specifying that they should be paid for by way of set-off out of ore to arrive after July 21st. This order, as appears from the extended correspondence about it which is shown in the record,

involved a departure from the terms of payment specified in the contract, and the more it was inquired into the less satisfactory the proposed terms of payment appeared. The Chicago company therefore declined to make the rails on those terms. Later a futile negotiation was started for the manufacture of some rails for the Wabash receivers, as the result of which it appeared a dispute arose about the form of the rails, which, however, was settled satisfactorily between the Chicago company and the Wabash receivers. Without going into detail as to the later correspondence, all of which appears in the record, it is sufficient to say that the St. Louis company did not at any time demand performance of the contract by the Chicago company, or express its readiness to take the rails and pay for them, except in receivers' certificates, which certainly was far from the equivalent of cash payment. The expression of readiness to accept small quantities (200 and 500 tons), even if accompanied by cash payment, would not have been a compliance with the contract.

Norrington v. *Wright*, 115 U. S., 188.

There was no express *refusal* on the part of the St. Louis company to carry out the contract, but there was constant and eventually complete *failure* to carry it out, doubtless on account of the insolvent condition of the company.

The damages resulting to the Chicago company from the failure of the St. Louis company to carry out its contract are shown in Exhibit "A" to the testimony of O. W. Potter. (Rec., 257). The amount is $28,390.16. The calculation is verified by the testimony of Mr. Potter (Rec., 254–258), and we understand there is no dispute about its accuracy.

II.

THE CHICAGO COMPANY HAD THE RIGHT, IN EQUITY, TO SET OFF ITS CLAIM FOR DAMAGES AGAINST ITS INDEBTEDNESS TO THE ST. LOUIS COMPANY.

The facts above outlined present the question which was passed upon, first by the Circuit court in the suit at law, and afterward by Judge Gresham in the equity cause, whether the Chicago company, under all the circumstances of the case, was entitled to set off as against the attachment claim of the Joliet company, and as against its own conceded indebtedness to the St. Louis company, the amount claimed for unliquidated damages by reason of the breach of the rail contract. It may narrow the field of discussion considerably if we admit at the outset that the rulings in the trial of the suit at law were correct.

We believe it to be true that unliquidated damages, or claims not yet due, cannot be set off under any statute for that purpose, or under any system of procedure at common law. It is perfectly clear that this demand was for an unascertained amount of damages. It is by no means clear that the entire claim had not *accrued* before the attachment suit was brought. But it is idle to dispute that *at law* the claim was such that it could not be set off.

It was upon this ground that the Circuit judge proceeded in dismissing the intervening petition, as appears from the decree itself (Rec., 465), and from the opinion (Rec., 461–2), in which the court expressly declines to rule upon any other question, and places his decision squarely upon the point that an unliquidated demand accruing after the commencement of the attachment suit stands *on the same footing in this proceeding as in a court of law.*

In this ruling the court seems to have singularly overlooked

the fact that he was sitting in equity, and administering equitable relief. That the rules of set-off in equity are wholly different from those which prevail at law is everywhere conceded. We think it will not be difficult to show that this case is precisely one of those to which equitable doctrines apply.

We are dealing here, it will be noticed, with the assertion of the Chicago company's right in a court of equity to enjoin the collection of a judgment at law, not on the ground that it was *improperly rendered*, but on the ground that, in the existing state of the equities between the parties it *ought not now to be enforced*. The intervening petition was filed in an equity cause, and proceeded throughout in accordance with equity practice. The testimony was taken before a master. The rulings of the court were expressed in a decree, and the case comes to this court by appeal, instead of by writ of error as would be the case with a suit at law.

But these are technical considerations. The substantial test of the character of the proceeding is, that it prays for equitable relief, upon equitable grounds. It is, in substance, a bill to enjoin the enforcement of a judgment at law. Such a bill will always lie where there is, in justice and good conscience, a defense to the collection of the judgment of such a character that it could not have been set up at law. This court, indeed, goes farther and holds, in numerous cases, that even where the defense was of a purely legal character, if the defendant was prevented from making it through fraud or accident, unmixed with his own negligence, it may still be asserted in equity.

Embry v. *Palmer*, 107 U. S., 3, and cases cited.
Crim v. *Handley*, 94 U. S., 652.
Knox County v. *Harshman*, 133 U. S., 154.

The first branch of the proposition is sufficient to sustain our position in this case.

The basis of this whole doctrine of equitable set off is simply the basis of all equitable relief, viz: that without it a party having a clear right which in conscience ought to be enforced, would be left without remedy.

When the intervening petition was filed, the breach of the rail contract had occurred; the right of the Chicago company to damages had become fixed; the amount of damages only was left for future ascertainment. Even though at an earlier time, as the Circuit court remarks, it was uncertain whether the Chicago company would lose or make money by the fulfillment of the rail contract, the breach of that contract by the St. Louis company gave rise to a claim for at least nominal damages, and at the date when the intervening petition was filed there was an absolute demand, subsisting and unchangeable, though as has been said, unliquidated and unsettled in respect to amount. The fact, therefore, if it be a fact, that *when the attachment writ was served* there was no existing indebtedness, cannot affect the equity of the petition. After the attachment, and before the entry (to say nothing of the enforcement) of the judgment, matters did arise which made it unconscionable that the judgment should be enforced; and those matters are the foundation of the equity here asserted. It will be noted, as has been pointed out in the statement of facts, that execution of the judgment at law was stayed for the express purpose of allowing the court of equity to determine the right of set off. At this time (January, 1886), the claim had fully accrued and it was recognized by the court of law, that the principles of equity might differ from its own.

Whether the counter-claim in this case be treated as recoupment or as matter of strict set-off is not very material. At law recoupment is allowed on equitable principles, while set-off is governed by the precise language of the statute. But since we are in a court of equity and not of law, that distinction is unimportant. The established doctrine is that recoup-

ment will be allowed whenever an action for damages arising out of the same subject-matter of the suit can be sustained and thus avoid circuity of action. Courts will favor recoupment rather than drive a party to a separate action.

Peck v. *Brewer*, 48 Ill., 54.
Railroad Company v. *Smith*, 21 Wall., 255.

And in Illinois, under proper pleadings, the defendant may even at law recover a judgment by way of recoupment for excess of damages over and above the plaintiff's claim.

Babcock v. *Trice*, 18 Ill., 420.

But the important thing to notice here is that whatever may be the rule at law, *in equity an attaching creditor will not be allowed to collect an indebtedness due from the defendant to an insolvent non-resident, who is in his turn indebted to the defendant;* and the fact that the damages are unliquidated, or that the claim is not due at the date of the attachment, or even at the date of judgment in the attachment suit, does not defeat this equitable right of set-off. It has been repeatedly held, and is sustained by the overwhelming weight of authority, that *either* insolvency or non-residence constitutes a sufficient ground for equitable interference. In this case we have *both*.

This case is free from any of the embarrassments which sometimes arise as to the mutuality of the claims. There is no doubt whatever that the claims asserted by the Chicago company and the St. Louis company are due and owing from one to the other, in the same right. There is no complication of equitable ownership, joint liability, suretyship or other embarrassing feature.

Nor is there any room for question that the attaching creditor stands on precisely the same footing as the St. Louis company, and a purchaser and assignee of the Joliet company's

judgment *pendente lite*, can surely claim no higher right than his assignor.

Drake, Attach., § 458.
Schuler v. *Israel*, *infra*.

No more satisfactory statement of the principle which ought to control this case can be found than that of Mr. Justice MILLER in *Schuler* v. *Israel*, 120 U. S., 506, 510. The statement is incidental to the point decided in that case, which was that a garnishee, even at law, may set up any defense which he could have made against the debtor; and if the debtor be insolvent and owing the garnishee on a note not yet due, for which the garnishee has not sufficient security, this will be a good defense. But the court lays down the principle in the following concise language:

"While it may be true that in a suit brought by Israel against the bank it could in an ordinary action at law only make plea of set-off of so much of Israel's debt to the bank as was then due, *it could by filing a bill in chancery in such case, alleging Israel's insolvency and that if it was compelled to pay its own debt to Israel, the debt which Israel owed it but which was not yet due would be lost, be relieved by a proper decree in equity;* and as a garnishee is only compelled to be responsible for *that which, both in law and equity, ought to have gone to pay the principal defendant* in the main suit, he can set up all the defenses in this proceeding which he would have in either a court of law or a court of equity." * * *

An interesting case on the doctrine of equitable set-off is the decision of Chancellor WALWORTH in

Lindsay v. *Jackson*, 2 Paige, 581.

We may be pardoned for quoting somewhat liberally from this opinion, which is generally followed and which commends itself to the most careful scrutiny. The chancellor says:

"There is a natural equity that creditors' demands should be offset against each other, and that the balance only should be recovered. * * * In the common law of England, however, this natural equity was not allowed or enforced in

the courts of law, but each party was left to recover his demand in a separate action. * * * But the court of chancery, even before the statute, recognized the principle of natural equity and acted upon it, in cases where the law could not give a remedy in a separate suit, in consequence of the insolvency of one of the parties. Thus in *Hawkins* v. *Freeman* (2 Eq. Ca. Abr., 10), which was decided by Lord Macclesfield five years before the statute of set-offs was passed, the court of chancery interposed to enforce this natural equity as between the administrator of an insolvent estate and the complainant, between which complainant and the intestate there were mutual demands. The same principle of natural equity was recognized by Lord Chief Justice Hale many years before. (See *Chapman* v. *Derby*, 2 Vern., 117.) And at this day, if a court finds a case of natural equity not within the statute, it will permit an equitable set-off, if from the nature of the claim, or from the situation of the parties, it is impossible to obtain justice by a cross-action.

Where there are mutual demands between the parties which cannot be set off under the statute, but which a court of equity may compensate or apply in satisfaction of each other, without interfering with the equitable rights of any person, *the fact that one of the parties is insolvent has frequently been held sufficient ground for exercise of the equitable jurisdiction of a court of chancery.* (*Lord Lanesborough* v. *Jones*, 1 P. Williams, 325.)

In *Pond* v. *Smith*, 4 Conn., 302, the Supreme court of Connecticut held that the insolvency of one of the parties was sufficient ground for the interference of the court of chancery to off-set mere legal demands against each other, although they were incapable of being set off at law, and that the complainant ought not to be left to pursue his legal remedies against the defendants, when from their insolvency no satisfaction of his demand could be thus obtained. In *Searchet* v. *Administrator of Searchet*, (2 Hamm., O., 320), the Supreme court of Ohio, on a bill in equity, permitted the complainants to off-set an equitable balance due to them from their copartner against a joint bond given by them to him, *although from the unliquidated nature of their claim there could be no set off at law.*"

Chancellor Walworth also quote, with approval the decision of the Supreme court of Kentucky, in *Robbins* v. *Hawley*, 1 Monr., 194, in which the court say:

"Robbins is admitted to be insolvent, and Dodge must be understood from the proceedings to be out of the country, and it will not be denied, but that these facts are sufficient, in general, to warrant a court of equity in taking cognizance of a cause for the purpose of setting off demands, which, from a lack of connection, could not otherwise be decreed in a court of equity."

Under the law of Scotland:

"A solvent debtor shall not be compelled to pay a liquidated debt, and come in with the other creditors for his illiquid claim; but he may plead compensation."

1 Bell's Law Dictionary, 258; Article, Compensation.

The general principles of set-off are recognized by public statute in Scotland as well as here, but the learned commentator on the law of Scotland says, the statute is in no degree exclusive of the operation of equity naturally falling under its rules; and that the insolvency of a party has always been admitted as a ground for administering an equitable remedy unknown to the ordinary course of law. 2 Bell's Con., 127. Cited in *Lindsay* v. *Jackson*, *supra.*

In the same case Chancellor WALWORTH adds:

"It is true that Judge Story in the case of *Green* v. *Darling* (5 Mason, 201), refused a set-off in equity because by the laws of the state where the contracts were made, one judgment could not be off-set against the other under the statute. But it must be recollected he was administering the law of a state which had no court of equity. * * * Judge Story says: * * * I do *not speak here of cases where distinct equities arose from other sources*, but upon the naked equity of distinct and unconnected debts and independent of any suitable restrictions. * * *"

After reviewing the authorities at length, Chancellor WALWORTH concludes:

"Under the circumstances of this case I think it would be unquestionably an injustice to permit the defendants to dispose of these notes each for their own private purposes or in pay-

ment of their ordinary or private creditors, leaving the complainant's debt unpaid."

This case was approved, and applied to still stronger facts in *Gay* v. *Gay*, 10 Paige, 369, 374:

"If an equitable right of set-off exists, while the parties have mutual demands against each other, because the debt due to the party claiming the set-off is so situated that it is impossible for him to obtain satisfaction of such debt by an ordinary suit at law, or in equity, to recover the same, this court, upon a bill filed, will compel an equitable set-off of one debt against the other. And the insolvency of the party against whom the set-off is claimed is sufficient ground for the exercise of the jurisdiction of the court of chancery, in allowing a set-off in cases not provided for by statute, *although the demands on both sides are not liquidated* by a judgment or decree so as to authorize a set-off upon a summary application by motion."

The case also decides, if decision were necessary, that an assignee of the subject-matter of the suit takes it subject to this equitable right of set-off existing in favor of the defendant.

We have cited these cases first, because of their clear and satisfactory discussion of the principle on which we rely. The case of *Schuler* v. *Israel*, cited above, is strictly in line with these New York authorities, and we find nothing in the decisions of this court which conflicts with the rule thus established. On the contrary, the doctrine of *Crim* v. *Handley* and other cases above referred to is entirely in accordance with our contention.

This court has not only recognized by many expressions the principle of equitable set-off, but has applied the doctrine in *Leeds* v. *Marine Insurance Company*, 6 Wheaton, 565. The agent of an insurance company effected two policies of insurance, and gave the company his own note for the premium. An action was brought by the insured in one of the policies to recover the amount of the insurance. The company, on the theory that the agent and the owners of the vessel insured

were in reality jointly interested in the insurance, sought to set off as against the amount of the policy the unpaid premium on the other policy. An injunction in a state court made it unsafe for the company to insist upon this defense in the action at law, and judgment therefore went against it for the full amount. It thereupon filed a bill in the Federal court, to compel the assured, who were the plaintiffs in the judgment at law to deduct from their judgment the amount of the unpaid premium; and this court, in this rather complicated state of facts, sustained the principle of equitable set-off and compelled the deduction to be made.

Next to the decisions of this court, the greatest weight should properly be attached to those of the Supreme court of Illinois, in which state the rail contract was made and was to be performed, the indebtedness in question was contracted, the attachment suit here involved was brought and the entire litigation was carried on and determined.

"It is settled that defendants in the Circuit courts of the United States can avail themselves of the laws which prevail in the state concerning the right of set-off generally. It would be a most pernicious doctrine to allow a citizen of a distant state to institute in these courts a suit against a citizen of the state where the court is held and escape the liability which the laws of the state have attached to all plaintiffs, of allowing just and legal set-offs and counter-claims to be interposed."

Partridge v. *Insurance Co.*, 15 Wall., 580.
West v. *Aurora City*, 6 Wall., 139.

We inquire then: What are the decisions in Illinois upon the right of equitable set-off? It seems to be universally held in that state as elsewhere, that *either insolvency or non-residence* is a sufficient ground for the interposition of equity.

In the first place, the decisions in Illinois on recoupment and set off in general are very liberal. As we have seen, the defendant is allowed to recoup damages in excess of the plaintiff's claim, a right which perhaps exists in no other state, recoup-

ment, like set-off, being generally held to be an instrument of defense but not of attack.

Again, in Illinois the class of claims which are held sufficiently connected with each other to permit of recoupment, is unusually large, as is illustrated by *Scott* v. *Kenton*, 81 Ill., 96, where, in a suit to recover the value of the use of a division fence under an alleged promise to pay, it was held that the defendant could recoup damages sustained from the plaintiff's cattle breaking into his premises, through defects in the division fence. The court in that case, as in others, explicitly holds that damages for a tort may be recouped in an action on a contract.

But aside from general principles, it has been repeatedly decided in Illinois that insolvency or absence from the state is sufficient ground for equitable jurisdiction to enjoin the collection of a judgment at law, where the judgment creditor was indebted upon cross-demands to the defendant. Thus in *Henrichsen* v. *Reinback*, 27 Ill., 295, the principle is recognized, though the injunction there was denied because there was no charge of fraud or insolvency. The liability claimed by the defendant in the judgment was a contingent liability as surety on a bond, and the court says:

"The liability is uncertain and contingent. He may never be required to pay a dollar on it. What equity, then, can there be in delaying Lewis, who is a judgment creditor, in the collection of his debt on the bare probability that at some future time he may be called on to satisfy the penalty of his bond. *Were he insolvent or about to leave the state*, there might be some pretense for the claim; equity might perhaps take jurisdiction under such circumstances:" Citing *Buckmaster* v. *Grundy*, 3 Gil., 626.

In *Raleigh* v. *Raleigh*, 35 Ill., 512, the doctrine which was unnecessary to the decision of the previous case was squarely asserted.

"Courts of equity will not enforce a set-off not allowed by law, unless the party seeking it can show some equitable ground for being protected against his adversary's demand. The mere existence of cross-demands is not sufficient (citing cases). *The insolvency of the party against whom the set-off is claimed is a ground for the exercise of equitable jurisdiction.* (*Gay* v. *Gay*, 10 Paige, 376.)"

The principle was vigorously applied in *Hall* v. *Kimball*, 77 Ill., 161. Hall & Co. were indebted to Kimball & Co. in the sum of $800. Betty McHatten, a partner of Hall & Co., individually made a note to Kimball & Co. for $5,492, which she failed to pay. Suit was brought by Kimball & Co. against Hall & Co. on the $800 note, and *after suit was commenced, Hall & Co. bought the note given by Betty McHatten* to Kimball & Co., which the latter in the meantime had endorsed and sold. Hall & Co. then, as the holders of the McHatten note, filed a bill to enjoin Kimball & Co. from collecting the $800, asking that the liability of Kimball & Co., as endorsers on the McHatten note might be set off against the same. It was alleged and proved that Betty McHatten and Kimball & Co. were insolvent when the note became due. The Supreme court, reversing the Circuit court, held that as the note was bought by Hall & Co. for their own use and benefit, they could maintain a suit against the maker in a court of equity, although the maker was a partner of the plaintiff firm; therefore the firm had a right to proceed against Kimball & Co. as endorsers. The court thereupon holds that the maker and endorser being insolvent,

"It would be inequitable to the firm of Kimball & Co. to enforce payment from Hall & Co., when at the same time Kimball & Co. are indebted to Hall & Co. We are, therefore, of the opinion that under the evidence appellants were entitled to set off a sufficient amount of the note to liquidate the amount of the demand for which appellants were sued by the appellee in an action at law."

In *C. D. & V. Railroad Company* v. *Field*, 86 Ill., 270, it is

held that where a judgment creditor is solvent at the time of bringing suit and obtaining judgment, and afterwards becomes insolvent, a court of equity will stay the collection of the judgment and compel the allowance of any set-off which the judgment debtor may have against the judgment creditor, notwithstanding such set-off existed at the time suit was brought and judgment rendered, if such set-off was not litigated in the suit.

The court, in this important case, enjoined the collection of a judgment on the ground of a defense which might have been set up in the action at law. The equity of the case was based solely upon the fact, that after the entry of the judgment and before its collection, the railroad company became insolvent, and therefore unable to pay to the defendant in the judgment the amount of a claim previously existing, and which might have been asserted by plea of set-off. It is taken for granted in the opinion of the court that a counter-claim which could not be asserted in the suit at law, will furnish the basis of an injunction against the collection of the judgment by an insolvent plaintiff, thus adopting the principle laid down by this court in *Crim* v. *Handley*, and the other cases cited, *supra*. It is held that as to any claim which might have been made in the suit at law, if it were a mere matter of defense, the failure to assert it there would bar the defendant from using it in equity; but the right to set up a counter-claim being permissive only, and not compulsory, the defendant in the judgment is not barred from asserting his counter-claim in a court of equity on the ground of insolvency. It is also taken for granted that *demands which accrued subsequent to the judgment may be made the basis of relief in equity where insolvency exists.*

"There is a natural equity that cross demands should be offset against each other and that the balance only should be recovered; and the court of chancery recognizes this principle and acts upon it in cases where the law cannot give a remedy

in a separate suit, in consequence of the insolvency of one of the parties (citing numerous cases). By the showing of the bill, appellant is justly indebted to appellees in a much larger amount than the judgment, and unless equity interposes as asked, appellant will enforce collection of its judgment against appellees, and the latter will lose the entire amount of their demand against appellant, on account of the insolvency of the latter, and the consequent inability to obtain satisfaction of their demand in a cross-action. This would be unjust, injurious and unconscientious. The claims in such case should cancel each other to the extent of the lesser one. For the creditor to receive satisfaction of his judgment by the cancellation of a debt of equal amount, due and owing from him to the judgment debtor, gives him a full equivalent and does him no injustice, while it saves the other from the injury of the loss of his debt. Appellant has a legal advantage here in having a judgment which it can collect without allowance of set-off, and which it is proceeding unfairly and unconscientiously to enforce the collection of, against the judgment debtors, whilst owing them a larger debt due, upon which it refuses to have the judgment applied, and which is uncollectible by suit on account of appellant's insolvency. Equity will interfere and restrain the use of such an advantage."

To the same effect is *Doane* v. *Walker*, 101 Ill., 628, 642. This was a bill for dower in which it appeared that the dowress, who succeeded in establishing her right, was liable to a purchaser of the land for the detention of that portion of it in which she was not entitled to dower. The rental value of the land thus unlawfully detained was largely in excess of the widow's claim for the value of her dower interest. It appeared that the widow was insolvent. The court, after stating the facts substantially as above, remarks:

"This, in our judgment, presents a clear case for the application of the doctrine of equitable set-off. It might not be technically a case of equitable set-off, yet, when considered in connection with the other circumstances of the case, we have no question as to the right of the court of equity to assume jurisdiction of it. Mr. Bispham, in his admirable work on Equity Jurisprudence, in treating of this matter, says, 'Mere matters of set-off will not give the court jurisdiction, for such

rights can be effectually tried at law, but where there is anything peculiar in the case, so as to render it impossible for exact justice to be done by a court of law under the statutes, a court of chancery will afford relief through the medium of an equitable set-off.' * * * It is a mistake to suppose that the insolvency of the appellee has nothing to do with this case. We regard it as a strong equitable feature of it. In *Raleigh* v. *Raleigh*, *supra*, it was said: 'The insolvency of a party against whom the set-off is claimed is a ground for the exercise of equitable jurisdiction.' (Citing *Gay* v. *Gay*, 10 Paige, 376.) To the same effect is the case of *C. D. & V. Railroad Company* v. *Field*, 86 Ill., 272, where *Raleigh* v. *Raleigh* is cited with approval. Other authorities might be cited but we deem it unnecessary."

The case of *Quick* v. *Lemon*, 105 Ill., 578, 586, is also very important. It is there held, following the doctrine of the *Raleigh* case and *Lindsay* v. *Jackson*, that

"It is a natural equity that cross demands should be set off against each other, and that the balance only should be recovered; and where the law cannot give a remedy in a separate action courts of chancery may grant relief. The insolvency of the party against whom the equitable set-off is claimed, has been held sufficient ground for the exercise of equitable jurisdiction. In this case the insolvency of the complainant was not shown by the allegations of the cross-bill, but it was averred that the plaintiff was beyond the jurisdiction of the court; that he had moved to the State of Iowa; that he could not be sued and the demand collected by a judgment in an action at law. *Non-residence has been held to be equivalent to insolvency*" (citing *Robbins* v. *Hawley*, *supra*).

Coming now to the decisions in other states we find it unnecessary to exhaust the list. A few may advantageously be cited.

A careful and well reasoned opinion is given by the Supreme court of Iowa in *Davis* v. *Milburn*, 3 Iowa Rep., 163, 166.

"The known rule of courts of equity is that they follow the law in regard to matters of set-off, unless there is some intervening equity going beyond the statute of set-off,

which constitutes the basis of set-off at law. * * * Whether in a case of mutual debts in the same right, as for example, mutual joint debts or mutual separate debts, the insolvency of either party would entitle the other to set off his debt against the debt of the insolvent party, without any other intervening equity, seems at one time to have been doubted in England (1 Atkins, 231). The doctrine, however, seems to be well settled in this country, and courts of equity have entertained jurisdiction of cases of set-off when there has been an obstacle to complainant's proceeding at law, who seeks to set off his claim, *such as insolvency*, *non-residence*, and the like."

This case, with several others, squarely decides that it is no objection to the application of the doctrine of equitable set-off that the claim sought to be set off is unliquidated.

"In such a case as the present, where no other special equities intervene, the court should not deny the relief on the ground that the damages are not ascertained, but allow the plaintiff to have the damages ascertained, and when ascertained, allow them to be set-off *pro tanto* against the judgment."

The court in this case quotes with approval the decision of the Supreme court of Kentucky in the case of *Jones* v. *Waggoner*, 7 J. J. Marsh, 141, holding that where the chancellor has jurisdiction of the case by injunction or otherwise, he will do justice between the parties, and the insolvency of the defendant being admitted, he will decree as a set-off against the judgment at law, damages growing out of a breach of covenant, and the same being fixed by the contract and the law, *he will assess them.*

The same point is decided in *Lindsay* v. *Jackson* and *Gay* v. *Gay*, cited above.

"It is deducible from the general scope of the authorities that insolvency has long been recognized as a distinct equitable ground of set-off."

Waterman on Set-off, Sec. 396.

The learned author just quoted, in a note to the same

section, discusses Judge STORY's intimation in *Green* v. *Darling*, 5 Mason, 201, that insolvency is not sufficient to give equitable jurisdiction. It is pointed out in this note that in *Green* v. *Darling* no decision of the question was required, and the subject is not discussed, and it is pronounced to be well settled law, Judge STORY's doubt notwithstanding, that insolvency furnishes a good ground for the interposition of equity in cases over which otherwise there would be no jurisdiction.

The Supreme court of Alabama in an early case says:

"We think it clearly deducible from the general scope of the English decisions that insolvency was recognized as a distinct equitable ground entitling the party to relief even in cases where both demands were purely legal. In the American courts the cases are more numerous and equally decisive to show that the same principle obtains in them generally."

Tuscumbia, etc., R. R. v. *Rhodes*, 8 Ala., 206.

In a later case the same court holds that a demand for unliquidated damages arising from breach of covenant of title, may be set off in equity against a note founded on an independent consideration, when the vendor is dead and his estate insolvent.

Wray's Administrators v. *Furniss*, 27 Ala., 471.

In *Edminson* v. *Baxter*, 4 Haywood, 112, judgment was obtained by a carrier for freight on certain casks of rum transported from New Orleans to Clarksville. The defendant in this judgment filed his bill, alleging that the plaintiff in the suit at law was a non-resident of the state, without property in the state, and claiming the right to offset against this judgment damages for neglect in the transportation of the rum. The injunction was granted, although the damages claimed were unliquidated, the court holding as to its jurisdiction as follows:

"It is said if it be legal to set off this demand, it might have

been done at law; if illegal, it ought not to be done here. Answer: Such is the situation of the defendants that if they get their execution satisfied, the complainant very probably will never get satisfaction of them, because of their removal, and being withdrawn from this state, leaving nothing here out of which he can procure satisfaction. This court will interfere to prevent mischief and the injustice which would otherwise happen.

The court proceeds upon the same principle as a court of law proceeds when it directs one judgment at law to be set off against another, not because it is ordered by the act for allowing set-offs, but because it is natural equity that a defalcation shall be made in such case."

The later cases in New York fully sustain the early doctrines of Chancellors Walworth and Kent. Thus in *Rothschild* v. *Mack*, 115 N. Y., 1, and in *Richards* v. *La Tourette*, 119 N. Y., 54, it was decided that on the ground of insolvency equity will offset a debt, even though it be not yet due, or in other respects of such a character that it cannot be set off in an action at law. It is there stated, as in one or two other cases, that where the debt from the insolvent to the party claiming the set-off is, by its terms, *due at a particular time in the future*, the set-off will not be allowed, for that would be to hasten the time of payment, contrary to the terms of the contract. This qualification, of course, has no application to a case where, as here, the debt due from the insolvent is a claim growing out of a breach of contract. Such a debt, by operation of law, is due at the moment the breach occurs, and the right to offset it does not in any way hasten the time of payment.

In Indiana the equitable doctrine is clearly held. In *Keightley* v. *Walls*, 27 Ind., 384, it was held, contrary to the *dicta* just cited from New York, that even a debt from an insolvent, maturing by its terms at a particular date, and not yet due, could be set off by the compulsion of a court of equity.

"It is argued that the previous suit was brought too soon

to obtain the set-off, inasmuch as the note was not yet due, and the most that could have been then accomplished was to prevent the transfer of the note with a view to compelling a set-off at its maturity. We cannot concur in that proposition. It may be generally true that a party cannot be compelled to receive payment upon a debt until its maturity. Ordinarily there could be no object in requiring it, and sometimes injustice would be done by doing so. But where satisfaction has in fact been made before the debt becomes due, and no injustice can result from settling the fact, courts of equity, for purposes of justice, have not hesitated to determine it by decree. In compelling an equitable set-off the court proceeds upon the ground that one payment is, *pro tanto*, in satisfaction of the other, and that the real indebtedness is merely the balance. All matters of interest can be arranged upon just principles so as to avoid injury."

This case was cited with approval in *Wulschner* v. *Sells*, 87 Indiana, 75, where the doctrine was yet further extended by holding that though in general mutual debts only can be set off against each other, this rule has exceptions:

"Whenever it is necessary to do equity or to prevent irremediable injustice, the *set-off will be allowed though the debts are not mutual.* In cases of insolvency, or of joint credit given on account of individual indebtedness, or where the joint debt is a mere security for the separate debt of the principal, the equity is obvious and the set-off will be allowed," (citing *Brewer* v. *Norcross*, 17 N. J. Eq., 219, and other cases.) "In *Keightly* v. *Walls*, *supra*, this court said: 'This is an application to compel a set-off, and thus satisfy both demands.' As a foundation for the interposition of the power of a court of equity to attain the end, the insolvency of Sells, the judgment defendant, for whose beneficial use it is averred the note was held, is alleged. That this is sufficient was intimated in *Keightly* v. *Walls*, 24 Ind., and is as well settled as any proposition can be by the courts."

On the proposition that *non-residence is equivalent to insolvency*, which, as we have seen, was decided in Illinois in *Quick* v. *Lemon*, 105 Ill., *supra;* see, also, *Taylor* v. *Stowell*, 4 Met., (Ky.), 175.

A very recent case in the court of appeals of Kentucky is

Forbes v. *Cooper*, decided February 23, 1889, and reported in 11 S. W. R., 24, where it was held that in an action for the price of merchandise, damages arising from the non-performance of a contract are not available by way of a counter-claim under the Kentucky statute in an action at law, but that such damages, though unliquidated, may nevertheless be set off by defendant, where the plaintiff is a non-resident, having no property in the state.

See, also,

Laybourne v. *Seymour* (Minnesota), 54 N. W. R., 941.

The right of equitable set-off, in ordinary cases, is, of course, analogous in principle to the same right in cases of bankruptcy. In the latter cases, however, the language of most of the statutes is peculiar and requires "*mutual credits*." This, it is generally held, means something more than mutual *demands*. The latter fulfill all the requirements of the principle here contended for. Cases may be found in which mutual credits, in the strict sense of that word, have been allowed *of themselves* to raise an equity, in the absence of insolvency, non-residence or any other peculiar circumstance; but, when these circumstances exist, the language of the authorities is that any cross-demands may be thus set off. It is not a question of the intention to create a trust or to base credit to one upon a cross-credit to the other. The question is not one of *intention* at all, but simply, as we have sufficiently argued, a question of equity and good conscience, to prohibit an insolvent or a non-resident from collecting an indebtedness on his side and leaving the other party without remedy for the collection of his equally meritorious claim.

III.

THE COURT OF EQUITY, HAVING JURISDICTION OF PARTIES AND SUBJECT-MATTER, WILL RENDER A DECREE IN FAVOR OF THE INTERVENING PETITIONER FOR THE AMOUNT OF ITS CLAIM IN EXCESS OF ITS INDEBTEDNESS TO THE ST. LOUIS COMPANY.

This follows from the familiar principle that a court of equity, having once obtained jurisdiction, will do complete justice between the parties. That the petitioner is properly in a court of equity, for the purpose of compelling the offset, and enjoining the collection of the judgment, we have abundantly shown. *The court has personal jurisdiction of the St. Louis Company.* The whole controversy can be adjusted by a decree in this proceeding, and since it can be, it ought to be.

It would be mere pedantry to cite authorities at length in support of this proposition. Two or three expressions from the books may serve to emphasize the breadth of the principle that equity will avoid circuity of action by settling all questions in one proceeding.

"The doctrine of set-off, by which a defendant may recover judgment for a debt against the plaintiff, is wholly of statutory origin, and the doctrine of recoupment, by which the plaintiff's pecuniary recovery may be *lessened* by means of a claim for damages in favor of the defendant, is a very recent innovation upon the common law methods of procedure. The modes of procedure in a court of equity have never been thus restricted. Its decree is not confined to the single adjudication for or against defendant, but as preliminary and leading up to the final award in favor of either party, or even in the very final award itself, being thus partially in favor of both litigants, it may make any adjustment, admit any limitations and determine upon any cross-demands and subordinate claims which complete justice done to the parties shall require. The decree in equity can thus easily shape itself to the circum-

stances of each case, even when the final relief is only an award of money or of possession of lands or of chattels." (1 Pomeroy Eq. Jur., 160.)

The following handsome statement by the Supreme court of Pennsylvania is found in *McGowin* v. *Remington*, 12 Penn. St., 63.

"When once a court of equity takes cognizance of litigation, it *will dispose of every subject embraced within the circle of contest*, whether the question be of remedy or of distinct, yet connected topics of dispute. If the jurisdiction once attaches from the nature of one of the subjects of contest, it may embrace all of them, for equity abhors multiplicity of suits."

See also *Jones* v. *Waggoner*, 7 J. J. Mar., 147, where it is held that when the chancellor has jurisdiction of the case, by injunction or otherwise, he will do justice between the parties, and the insolvency of the defendant being admitted, he will decree as set-off against the judgment at law, damages growing out of a breach of covenant, and the same being fixed by the contract and the law, he will assess them.

Upon the whole case we cannot doubt that equity and justice as well as the principles of law require a reversal of the decree of the Circuit court, and that judgment be entered in this court in favor of the intervenor, perpetually enjoining the collection of the Joliet judgment, and decreeing the payment by the St. Louis Company of the difference between the amount of that judgment, $16,473.28, and the claim of the Chicago Company for damages, $28,390. It seems unnecessary to remand the case for further ascertainment of the question of damages, though that is within the power of the court if it should be deemed important.

Failing one of these methods of relief, the Chicago Company will have to pay the full amount of the judgment, and will be remitted for collection of its cross-demand to an action in a foreign jurisdiction against an insolvent non-resident; even

if its action be not barred by the statute of limitations. It would be a reproach to justice if the court of equity, having the jurisdiction and power to protect all parties and do justice between them, should remit the intervenor to so precarious a remedy.

E. PARMALEE PRENTICE,
CHARLES S. HOLT,
Of Counsel for Appellant.

[redacted]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE NORTH CHICAGO ROLLING MILL COMPANY,
Appellant,
vs.
THE ST. LOUIS ORE AND STEEL COMPANY AND DAVID K. FERGUSON,
Appellees.
Term No. 197.

STATEMENT AND BRIEF FOR APPELLEES.

This is an appeal from a final decree entered on November 18, 1889,[1] in and by the Circuit Court of the United States for the Northern District of Illinois, dismissing, for want of equity, an intervening petition filed[2] by the North Chicago Rolling Mill Company, appellant, on January 18, 1886, as intervenor in the suit of Robert M. Olyphant,

[1] Printed record, p. 465.

[2] Pr. Rec., p. 150.

complainant, *v.* The St. Louis Ore and Steel Company and others, defendants, theretofore pending in said court; but without prejudice to the right of said petitioner to bring suit against said St. Louis Ore and Steel Company for damages claimed by petitioner for the non-performance by said St. Louis Ore and Steel Company of the agreement dated December 1, 1883, mentioned in said petition.

In said principal suit of Olyphant *v.* St. Louis Ore and Steel Company et als., a final decree was entered on May 16, 1887,[1] sustaining the plea filed in said suit by said defendant and dismissing the bill at complainant's cost; but directing said intervening petition of the appellant here to stand as an original bill, with the answers thereto and the replication of said petitioner, free from all prejudice consequent upon the dismissal of said principal suit and for further hearing upon the pleadings and proofs.

On May 16th and 17th, 1889, said intervening petition came on for hearing before the Hon. Walter Q. Gresham, Circuit Judge, was heard and submitted upon the pleadings and proofs and taken under advisement.[2] On July 8, 1889, Judge Gresham delivered an opinion in said cause;[3] in pursuance of which the final decree herein appealed from was entered on November 18, 1889,[4] to wit (caption omitted), in the words and figures following:—

Now comes the said intervening petitioner, by George Willard, its solicitor, and the said St. Louis Ore and Steel Company, Ethan A. Hitchcock, receiver, and David K. Ferguson, respondents, by Hutchinson & Luff, their solicitors, also come, and this cause coming on to be heard upon the said intervening petition the answers thereto, replications to said answers, and the proofs taken herein, and the court, having heard the said pleadings and proofs and the argument of counsel, and being fully advised, doth find that

[1] Pr. Rec., pp. 236–7.
[2] Pr. Rec., pp. 460–61.
[3] Pr. Rec., pp. 461–2.
[4] Pr. Rec., p. 465.

at the time of the commencement of the said attachment suits of the said Joliet Steel Company against the said St. Louis Ore & Steel Company, to wit, on the 21st day of July, 1884, the said St. Louis Ore & Steel Company was not indebted to the said petitioner for damages for the non-receipt of rails under said agreement between said petitioner and said St. Louis Ore & Steel Company, dated the first day of December, A. D. 1883, set out in the said petition, the court in the trial of the action at law, having allowed as a set-off in favor of the North Chicago Rolling Mill Company all demands against the St. Louis Ore & Steel Company, except said claim for unliquidated damages; and it is therefore ordered, adjudged, and decreed that the said intervening petition be, and the same is hereby, dismissed, for want of equity without prejudice to the right of said petitioner to bring suit against it, said St. Louis Ore & Steel Company, for damages for the non-performance of said agreement, and thereupon the said petitioner moves that the said injunction heretofore granted herein be continued, and prays, also, for an appeal to the Supreme Court of the United States; which motion and prayer are allowed upon the filing of an appeal bond in the sum of twenty-five thousand dollars, with surety, to be approved by the court within ten days, to operate as a supersedeas.

The opinion delivered by Judge Gresham, briefly setting forth the facts upon which the controversy turns, is as follows:[1] —

Gresham, J.:

On December 1, 1883, the North Chicago Rolling Mill Company, an Illinois corporation, and the St. Louis Ore and Steel Company, a Missouri corporation, entered into a written contract whereby the former company agreed to manufacture and deliver to the latter company 18,000 tons of steel rails, at $35 per ton, in monthly installments, during the year 1884. About the same time Cherrie & Co., of Chicago, agreed with the Chicago company to purchase from the St. Louis company and deliver

[1] Pr. Rec., pp. 461–2.

to the Chicago company 100,000 tons of Pilot Knob iron ore. Cherrie & Co. failed on July 3, 1884, not having fully performed their contract, and the St. Louis company agreed to sell and deliver to the Chicago company a quantity of ore of the same class at the same price. Ore was delivered under this contract. The failure of Cherrie & Co. appears to have embarrassed the St. Louis company, and on July 21, 1884, in a suit brought against that company in the circuit court of the United States for the eastern district of Missouri, a receiver was appointed, who took charge of the company's assets and undertook to carry on its business.

On the same day the Joliet Steel Company, an Illinois corporation, brought a suit in attachment against the St. Louis company and garnished the Chicago company, claiming that it was then indebted to the St. Louis company in the sum of $19,000 for ore sold and delivered under the contract already referred to.

The Chicago company filed a plea of set-off, containing different items of indebtedness due to it from the St. Louis company, all of which were allowed, except a claim for unliquidated damages, growing out of the non-fulfillment of the contract of December 1, 1883, the court holding that a claim of that nature could not be allowed as a set-off in a suit at law. A judgment was entered against the Chicago company as garnishee in favor of the St. Louis company for $16,000 for the use of the Joliet company, and the Chicago company then filed its intervening petition in this case.

After setting out the proceedings in the suit in garnishment the petition avers that the St. Louis company is insolvent and prays that the damages resulting from the non-fulfillment of the rail contract be ascertained and set off against the judgment entered against the petitioner as garnishee.

After the intervening petition was filed the St. Louis company effected a compromise with its creditors, and the suit against it in the Federal court at St. Louis was dismissed and its property was restored to its possession. The judgment against the Chicago company as garnishee was for money due for pig-iron bought from the St. Louis

company and the claim of the former company is for unliquidated damages growing out of the failure of the latter company to receive rails under the contract of December, 1883, a contract having no connection with the one upon which the Chicago company was garnished.

When the latter company was served as garnishee no part of the claim now urged as a set-off had accrued.

The Chicago company then had no right of action for recovery of that claim or any part of it. Indeed, it was then uncertain whether that company would make or lose money by the further performance of the rail contract. Without ruling upon other questions discussed by counsel, it is sufficient to say that the claim for unliquidated damages growing out of the failure of the St. Louis company to receive rails under the rail contract after the failure of that company and after the commencement of the suit in attachment and the service of the writ of garnishment upon the Chicago company was properly rejected by the court in the trial of the action at law and cannot now be set off against the judgment rendered against the garnishee.

The intervening petition is dismissed without prejudice to the right of the Chicago company to prosecute an action against the St. Louis company.

Appellant's intervening petition[1] sets out in full the "rail contract" of December 1, 1883, above mentioned: also[2] a contract between the North Chicago Rolling Mill Co. (appellant) and Cherrie & Co. of Chicago, dated December 26, 1883, for 50,000 tons of Pilot Knob Iron Ore, to be delivered by Cherrie & Co. during the year 1884, with option to purchaser for 25,000 tons more deliverable in 1885, at $5.25 per ton f.o.b. cars at Chicago, payable in cash on the 15th of each month for all ore delivered during preceding month.

Under a subsequent verbal agreement between them,[3] the Ore & Steel Co. sold and delivered to the Rolling Mill

[1] Rec., p. 150. [2] Rec., p. 154.

[3] Testimony of O. L. Garrison, Rec., pp. 267, 270.

Co. from time to time until July, 1884, large quantities of pig iron, at $18 per ton, payable in cash as weighed up and delivered at appellant's mill in Chicago.

Intervenor's petition avers[1] that it purchased this pig metal "upon consideration that the said St. Louis Ore and Steel Company *had entered into* the written contract aforesaid," viz.: the rail contract of December 1, 1883; also that[2] "in consideration also of the aforesaid contract with the said St. Louis Ore and Steel Company for the manufacture of rails, your petitioner purchased of, and as your petitioner is informed and believes and charges the fact to be, the said St. Louis Ore and Steel Company in consideration of said rail contract, sold to one R. M. Cherrie, doing business under the firm-name of R. M. Cherrie & Co., a large quantity of iron ore from the mines of said St. Louis Ore and Steel Company at Pilot Knob in the State of Missouri, which said purchase was and is evidenced by a certain contract in writing" — viz.: the contract between appellant and Cherrie & Co., dated December 26, 1883.[3]

Defendant's answer[4] denies these averments, alleging that said rail contract of December 1, 1883, the ore contract of December 26, 1883, between appellant and Cherrie & Co., the sales of ore by defendant to Cherrie & Co., and the sales of pig metal by defendant to appellant, were all entirely separate and distinct transactions: and the testimony offered by defendant was to that effect.[5]

Up to July, 1884, these several contracts were carried out between the parties.

On July, 3, 1884, Cherrie and Co. made an assignment, and ceased delivering ore to appellant. On July 7th a verbal agreement was made between appellant and the

[1] Rec., pp. 153–4.
[2] Rec., p. 154.
[3] Rec., p. 154.
[4] Rec., p. 210.
[5] Testimony of O. L. Garrison, Rec., pp. 267–270.

Ore & Steel Co.[1] for the sale and delivery by the latter of Pilot Knob ore, at the same price, $5.25 per ton. Under that agreement, about 5,000 tons of ore were received by appellant[2] for which, on July 21st, it owed the Ore & Steel Co. $27,110.90, in addition to $17,775.92 for pig metal, making the total indebtedness of appellant at that date to the Ore & Steel Co. $44,916.82.[3]

Under the rail contract of December 1, 1883, the Ore & Steel Co. was to pay appellant on the 10th of each month for all rails delivered during the preceding month; and all rails delivered before the month of June were so paid for. On July 10, 1884, the Ore & Steel Co. owed the Rolling Mill Co. $21,536.56 for rails delivered during the month of June. Adding to this $1,483.11 paid by appellant in June as freight charges on pig metal and $4,839.10, balance of freight charges paid on ore, and a claim of $458.66 for shortage of metallic iron in said ore, and deducting all said credits from said total indebtedness of $44,916.82, there remained due to the Ore & Steel Co. from the Rolling Mill Co., on July 21, 1884, a net balance of $16,599.39, as shown by statement of account rendered by the latter to the Ore & Steel Co. under date of January 15, 1885.[4]

On July 21, 1884, two attachment suits (Nos. 19,235 and 19,236), were brought in the Superior Court of Cook County, Illinois, against the St. Louis Ore & Steel Co. for about $8,000 and $10,000 respectively; in both which the North Chicago Rolling Mill Co. (appellant) was on the same day summoned as garnishee and interrogatories filed.[5] On September 15, 1884, said suits were removed to the United States Circuit Court for the Northern District of

[1] Rec., p. 156; compare O. L. Garrison's testimony, Rec., pp. 268–70.
[2] Rec., p. 262.
[3] As per account rendered by appellant Jan. 15, 1885, Rec., p. 262.
[4] Rec., p. 262: see O. W. Potter's testimony, p. 260.
[5] Rec., pp. 237-8.

Illinois,[1] but the garnishment proceeding in only one of said suits was prosecuted to final judgment, the other garnishment being dismissed by consent, February 3, 1886.[2]

In the former, under the Illinois practice, a conditional judgment was entered on October 18, 1884, against said garnishee, *scire facias* issued November 14th, answer of garnishee filed November 25th and its amended and supplemental answer filed by leave on February 25, 1885.[3]

In said answer appellant stated an account[4] between itself and the St. Louis Ore & Steel Co., admitting that on July 21, 1884, date of service of garnishment, it owed the St. Louis Ore & Steel Co. $44,916.82 in all, for iron ore and pig metal, as above stated; but claiming credit not only for the amount due ($21,536.56) for rails delivered in June, freight charges on ore and pig metal ($6,322.21) and shortage on ore ($458.66), as above stated, but also for $28,390.16 estimated damages for the Ore & Steel Co.'s failure to accept and pay for 10,881 tons of rails deliverable from July to December, 1884, under the contract of December 1, 1883, and $100 damages for its failure on July 10, 1884, to pay the amount due for rails delivered in June. The reply of plaintiff, filed May 6, 1885, denied non-performance by the Ore & Steel Company of said contract of December 1, 1883, or that in connection with or growing out of any such alleged contract said garnishee had suffered any damages as claimed, or that any such damages, if sustained, could be set forth or claimed by said garnishee in said cause.[5]

At the trial of said cause on January 13, 1886,[6] the court sustained plaintiff's motion to strike out the evidence on the part of said garnishee relating to the set-off claimed by it for damages on account of the non-receipt of rails by

[1] Rec., p. 157.
[2] Rec., p. 337.
[3] Rec., pp. 341-3.
[4] Rec., p. 344.
[5] Rec., p. 346.
[6] Rec., p. 347.

the Ore & Steel Company, defendant, and for judgment for said garnishee upon its answer, and rendered judgment in favor of the St. Louis Ore & Steel Company, defendant, for the use of the Joliet Steel Company, plaintiff, for $16,473.28; but ordered a stay of execution.

On July 21, 1884, Robert M. Olyphant, trustee under a mortgage executed by the St. Louis Ore & Steel Company, securing $600,000 of its bonds on certain lands in Missouri and Illinois, brought suit in the Circuit Court of the United States for the Eastern District of Missouri against said Ore & Steel Company, for the foreclosure of said mortgage and for the appointment of a receiver.[1] On the same day[2] that court appointed Ethan A. Hitchcock provisional receiver therein, directing him to take possession of the property and carry out the contracts of the defendant company; which appointment was on August 7, 1884,[3] made permanent, and on August 25th further directions were given to said receiver in respect of the existing contracts of the defendant company.[4]

On September 29, 1884, an ancillary suit was brought[5] in the Circuit Court of the United States for the Northern District of Illinois, by said R. M. Olyphant, trustee, against the St. Louis Ore & Steel Co.; the bill of complaint in which, referring to the attachment suits above mentioned and other embarrassments of the Ore & Steel Co. in said district, prayed that a receiver be appointed therein for said Ore & Steel Company in aid of the receivership in Missouri; with which bill was filed a transcript of the proceedings in the Missouri court up to that date.[6] On the same day Ethan A. Hitchcock was by said court appointed receiver of said company, all orders in the Missouri suit being approved and adopted so far

[1] Rec., p. 6.
[2] Rec., p. 86.
[3] Rec., pp. 90–92.
[4] Rec., pp. 123, 127.
[5] Rec., p. 2.
[6] Rec., pp. 6–128.

as applicable. On October 9, 1884, said receiver accepted said appointment and entered his appearance in said suit. [1] Thereafter divers proceedings were had in said suit, fully set out in the record herein, but not material to this controversy.

On January 18, 1886, five days after verdict and judgment rendered in said garnishment suit, the North Chicago Rolling Mill Co. (appellant) filed, by leave, in said principal (Olyphant) suit its intervening petition above mentioned; therein setting forth said rail contract and alleging the non-fulfillment thereof by the Ore & Steel Co., the purchases of ore and pig metal from the latter by petitioner, and the proceedings in said garnishment suit, and praying that the Joliet Steel Co. and St. Louis Ore & Steel Co. be restrained from further prosecuting said suit until the settlement and adjustment of the account between said petitioner (appellant) and said St. Louis Ore & Steel Co., including the damages claimed by said garnishee under said rail contract as a further set-off to its indebtedness to the Ore & Steel Co.

The grounds alleged for such equitable relief were, in substance: —

That said Ore & Steel Co. failed to make payment on July 10, 1884, for the rails delivered in June, under the rail contract of December 1, 1883, to the damage of petitioner in about $100: [2]

That to enable it to carry out said rail contract, petitioner provided large quantities of iron ore and pig metal, and upon consideration that said Ore & Steel Co. had entered into said contract petitioner purchased, and said Ore & Steel Co., upon consideration of said written contract, sold to petitioner, from time to time large quantities of pig metal, between December 1, 1883, and July 10, 1884; [3]

That except 260 tons delivered to said receiver in July

[1] Rec., pp. 128–9. [2] Rec., p. 156. [3] Rec., pp. 153–54.

and paid for in August, 1884, said Ore & Steel Co. and its receiver failed to take or pay for the rails deliverable under said contract after July, 1884, a balance of 10,618 tons of said rails still remaining unreceived and unpaid for under said contract:[1]

That by reason of said failure "petitioner was unable to use a corresponding amount of material in the manufacture of rails at the price of $35 per ton of 2,240 pounds, and as the best disposition which petitioner could make of the material which petitioner had on hand for the purpose of making the balance of 10,618 tons of rails or thereabouts due under said contract, your petitioner put said material into the manufacture of rails at the price of $29.50 per ton or thereabouts, the market price of such materials and of rails having depreciated in the market from about the 20th day of July, 1884, until on and after the first day of January, 1885:"

That but for such default the whole or a large quantity of the identical iron and pig metal received from said Ore & Steel Co. in July, 1884, would have been used up in the manufacture of said rails under said contract, if all of them had been taken thereunder; and that in consequence of such non-performance of said contract by the Ore & Steel Co., petitioner was damaged $28,390.16.[2]

That on the trial of said garnishment suit petitioner introduced proof fully sustaining the items of damage aforesaid, but it was ruled in said cause that said items of unliquidated damages could not be recouped and set off therein, because the nature of said cause allowed only the application of strict rules of law and precluded the application of equitable rules:[3]

That the damages claimed as aforesaid grew out of the subject-matter of said dealings between said Ore & Steel Co. and petitioner; that said company made default in the performance of said rail contract before service of said writs of garnishment, and in consequence thereof damages accrued to petitioner before such service of said writs; that subsequent to the service of said writs said Ore & Steel Co. made default in the performance of said rail contract

[1] Rec., p. 153. [2] Rec., pp. 156–7. [3] Rec., p. 158.

in respect of the taking of rails and paying for the same and such defaults continued from thence hitherto.[1]

That at the date of service of said writs of garnishment petitioner was indebted to said Ore & Steel Co. in the sum of $44,916.82 for ore and pig metal purchased by it, but the same was not due or payable until August 15, 1884, before which date a default had taken place on the part of said Ore & Steel Co. in respect both of the receipt of and payment for rails, causing damage to petitioner, which default and damage was continuously increased during the remaining period for performance of said contract, to wit, during the latter part of the year 1884:[2]

That in one of the two attachment suits brought by the Joliet Steel Company against the St. Louis Ore and Steel Company, a judgment was entered on January 7, 1886, for $8,466.64, and in the other a verdict was rendered for $10,051.78, and that said plaintiff intended to take judgment against petitioner (as garnishee) in said causes, thereby depriving it of all benefit of recoupment and set-off of said damages:[3]

That said St. Louis Ore & Steel Co. is insolvent, and unless petitioner be allowed to recoup and set off said damages in the settlement of accounts between them, the same will be lost to petitioner.[4]

Besides said attachment suits brought by the Joliet Steel Co. on July 21, 1884, the Iron Mountain Company, a Missouri corporation, on the same day brought an attachment suit against the St. Louis Ore & Steel Co., in the Superior Court of Cook County, in which also the North Chicago Rolling Mill Co. was summoned as garnishee: and since, under the attachment law of Illinois,[5] all judgments in attachment against the same defendant returnable at the same term are entitled to share *pro rata* in the proceeds of the property attached or garnished, said Iron Mountain Company was also interested in said garnishment.

[1] Rec., p. 158.
[2] Rec., p. 158.
[3] Rec, pp. 158–9.
[4] Rec., p. 159.
[5] Rev. Stat. Ills., Cochran's ed., 1887, p. 132; Chap. XI, Sec. 37.

On November 15, 1886, demurrers to said intervening petition, filed by the Joliet Steel Company, Iron Mountain Company and the St. Louis Ore & Steel Company and its receiver, were overruled and an order made temporarily restraining the enforcement of the judgment against said garnishee.[1] Answers were filed to said intervening petition by the Ore & Steel Company and its receiver December 17, 1886,[2] and by the Joliet Steel Company and Iron Mountain Company on March 28, 1887;[3] the latter company disclaiming any interest in said proceedings, the claim on which its attachment suit was brought against the Ore & Steel Company having been settled. Said answers, while admitting the proceedings and judgment in the garnishment suit as alleged, denied the several other grounds of relief therein set forth, averring that said claim for damages was properly disallowed at the trial of said garnishment suit because said alleged damages were unliquidated in their nature, and arose out of transactions distinct from the subject-matter in the suit in which such set off was claimed, and that such damages, if any there were, were not a subsisting cause of action in favor of said garnishee at the time when it was summoned as such garnishee in said attachment suit; and that if any claim for damages accrued to petitioner against said Ore & Steel Company before the service of said writs of garnishment, it could have been set off in said garnishment suit and was now barred by judgment therein.[4] To these answers petitioner filed general replications on April 11, 1887.[5]

On March 28, 1887, the St. Louis Ore & Steel Company filed in said principal (Olyphant) suit its plea in bar, to the effect that the several bonds and mortgages mentioned in the bill of complaint therein had all been paid, surrendered

[1] Rec., p. 208.
[2] Rec., p. 209.
[3] Rec. pp. 214, 226.
[4] Rec., pp. 223–4.
[5] Rec., pp. 234–6.

and released, a settlement having been made with the holders thereof.[1]

On May 16, 1887, a final decree was entered in said principal suit, sustaining said plea, dismissing the bill of complaint and ordering the discharge of said receiver upon the filing and approving of his account: but further providing that said intervening petition of the North Chicago Rolling Mill Company stand as an original bill, with the answers thereto and replications theretofore filed, etc., the restraining order being continued in force; and this cause was referred to a Master to take testimony therein.[2]

On June 16, 1887, Ethan A. Hitchcock, receiver, filed his final account, which was approved and said receiver discharged.[3]

On May 3, 1888, David K. Ferguson (appellee here) filed his supplemental bill, referring to said intervening petition and averring that on April 9, 1887, the two judgments recovered by the Joliet Steel Company in said attachment suits against the St. Louis Ore and Steel Company, one on January 7, 1886, for $9,101.85, the other on February 5, 1886, for $10,760.41, were on April 9, 1887, assigned to him for value by said Joliet Steel Company, and prayed to be made a party thereto, with leave to appear, etc.,[4] upon which an order was afterwards entered *nunc pro tunc*[5] making him a defendant, as prayed.

On November 26, 1888, the Master to whom said intervening petition was referred filed his report and a large amount of testimony, oral and documentary, taken in connection therewith.[6] On December 4, 1888, leave was granted[7] to said petitioner to amend its intervening petition, also to said St. Louis Ore & Steel Company and Ethan A.

[1] Rec., pp. 227–233.
[2] Rec., p. 237.
[3] Rec., p. 246.
[4] Rec., p. 246.
[5] Rec., p. 467.
[6] Rec., pp. 249–326.
[7] Rec., p. 327.

Hitchcock, Receiver, to amend their answer thereto, and to David K. Ferguson to amend his supplemental bill, and said cause was referred back to the Master to take further proofs. Amendments to said several pleadings were thereupon filed, in substance setting forth that on January 13, 1886, a judgment was rendered in one of said attachment suits (No. 19,235) against the North Chicago Rolling Mill Company, as garnishee, for the sum of $16,473.28, in favor of the St. Louis Ore and Steel Company for the use of said Joliet Steel Company and all others interested therein.[1] On March 28, 1889, was filed the Master's further report and further testimony taken by him, including the record in said garnishment suit, further documentary evidence and oral testimony.[2]

On May 16th and 17th, 1889, this cause came on to be heard before Gresham, Circuit Judge, on said intervening petition, answers and proofs, was argued and submitted by counsel, and on July 8, 1889, was decided by Judge Gresham (see opinion, *supra*, p. 3):[3] and on November 18, 1889, was rendered the final decree herein appealed from (*supra*, p. 2).[4]

On December 14, 1889, an order was entered *nunc pro tunc* making David K. Ferguson a party defendant to said intervening petition, as prayed for in his supplemental bill filed May 3, 1888.

The cause was submitted to Judge Gresham on the proofs returned by the Master with his two reports above mentioned. The first report, filed November 26, 1888,[5] besides documentary evidence,[6] included oral testimony given before the Master by O. W. Potter, President of appellant company, and others, for appellant,[7] and by O.

[1] Rec., pp. 327–330.
[2] Rec., pp. 235–460.
[3] Rec., p. 461.
[4] Rec., p. 465.
[5] Rec., pp. 249–326.
[6] Rec., pp. 275–326.
[7] Rec., pp. 250–65.

L. Garrison, Secretary and Treasurer of the Ore & Steel Co. and agent for the receiver during the receivership, for defendants.[1] The second report, filed March 28, 1889,[2] besides the record in the attachment suits,[3] and in the garnishment suit,[4] included the testimony (preserved by bill of exceptions) of O. W. Potter and others for appellant[5] at the trial of said garnishment suit; also, a transcript[6] of further proceedings in the (Olyphant) suit in Missouri, put in evidence by defendants, showing *inter alia*[7] that in February, 1887, all controversies in said suit and all demands against the St. Louis Ore & Steel Company having been settled between the parties, the receiver was ordered to and did restore to said company the possession of all its property theretofore in his charge except a balance of cash held by him, that[8] on September 10, 1888, said cause was discontinued and on October 3, 1888, said receiver discharged and his bond cancelled by order of said court.

From the proofs submitted to Judge Gresham, it appears: —

1. *As to appellant's claims for damages*:

(*a*) The item of $100 "damages, non-payment for rails in July delivered in June"[9] is claimed in the intervening petition[10] on the ground "that by reason of the aforesaid default in the performance on the part of the said St. Louis Ore and Steel Company *by failing to make payment on July 10, 1884*, for the rails delivered by your petitioner in the month of June preceding your petitioner was damaged to the extent of about $100, a little more or

[1] Rec., pp. 267–75.
[2] Rec., pp. 335–460.
[3] Rec., pp. 385–7.
[4] Rec., pp. 337–47.
[5] Rec., pp. 351–82.
[6] Rec., pp. 388–460.
[7] Rec., pp. 427–30: 441: 452–5.
[8] Rec., pp. 428–30.
[9] Rec., p. 157.
[10] Rec., p. 156.

less." The full amount ($21,536.56) claimed as due petitioner for said rails (delivered in June) was allowed to it in the garnishment suit. It would seem that this further claim of "about $100, a little more or less," for default in making that payment when due, amounts simply to a claim for interest thereon for delay in payment; but Mr. Garrison testified for the defendants[1] that no demand was made nor account rendered for the amount due July 10, 1884, until some months afterwards: and this $100 was not claimed by the petitioner as interest thereon, but as "damages," and no proof was offered in support thereof.

(*b*) The amount ($28,390.16) which said garnishee claimed to set off as damages for the failure of the Ore & Steel Co. to receive and pay for the balance of the rails deliverable under said contract, was arrived at, according to Mr. Potter's testimony,[2] by figuring the difference between what the Rolling Mill Company would have realized by working up said ore and pig metal into rails, if said rails had been delivered to and paid for by the Ore & Steel Co. at $35 per ton, as compared with what it realized from said ore and pig metal, when manufactured into rails under other contracts after the market price for rails had fallen to $29.50 per ton: or, to give his own words on cross-examination:[3] —

"Our claim for damages is made by figuring the price of rails under the contract we had with the St. Louis Ore and Steel Company, the price that we paid for the material, and the price that we got for it under the reduced contracts that we made with other parties afterwards, by reason of the failure of the St. Louis Ore and Steel Company to carry out its contract."

[1] Rec., p. 268.
[2] Rec., pp. 256-7: 354-8.
[3] Rec., p. 356.

(c) The rail contract of December 1, 1883[1] between appellant and the Ore & Steel Co., was entirely independent of and distinct from the ore contract of December 26, 1883,[2] between appellant and Cherrie & Co.; and both those contracts were entirely independent of the verbal agreements,[3] under which the Ore & Steel Co., in July, 1884, sold and delivered to appellant 988 tons of pig metal and 5,163 tons of iron ore,[4] for which, on July 21, 1884, appellant was indebted to the Ore & Steel Co., as admitted in its answer as garnishee.

The testimony for defendants to this effect was explicit and uncontradicted.[5] No testimony was offered for appellant tending to show that either of said contracts was made in consideration of or was in any wise dependent upon either of the others.

Mr. Potter, President of appellant, when asked what connection the purchase of said ore and pig metal from the Ore and Steel Company had with the rail contract made with that company, replied[6] that said materials went into the manufacture of the rails, *in part*, that were delivered to said company, and were purchased for that purpose, among other purposes, but further testified:

"(By the Court) You say this metal was purchased for the purpose of making *these rails?*

"A. *I do not wish to be understood that way.* It was purchased *for the purpose of making rails*, and entered into the manufacture of these rails made for the St. Louis Ore and Steel Company."

He also testified[7] that all the rails which were manufactured under its contract with the Ore & Steel Company were delivered to that company: that[8] while that con-

[1] Rec., p. 151.
[2] Rec., p. 154.
[3] Rec., p. 156.
Rec., pp. 154–156.
[5] O. L. Garrison's testimony, Rec., p. 270.
[6] Rec., pp. 352–3.
[7] Rec., p. 354.
[8] Rec., p. 358.

tract was being performed, appellant was engaged in executing other contracts; that some of the materials purchased by it from the Ore & Steel Company were used in manufacturing rails for other parties, and that the rails which were manufactured for the Ore & Steel Company included in their composition materials obtained from other parties: also[1] that after the appointment of a receiver for the Ore & Steel Company in July, 1884, appellant made little or no effort to dispose of said material, except by endeavoring, during the receivership, to have the Missouri Pacific Railway Company take rails under said contract at a lower price, but without success.

2. *As to the insolvency of the Ore and Steel Co.*

Besides the record testimony above mentioned, showing that more than a year before this case was heard before Judge Gresham all the indebtedness of the Ore & Steel Company had been settled and its property released from the receivership, attention is called to the testimony of O. L. Garrison on January 14, 1888, before the Master,[2] to the effect that said company was then entirely solvent, having real estate in St. Louis worth $75,000 standing unincumbered in its name, and that a judgment of $50,000 against it was collectible at any time.

No rebutting testimony on this subject was offered by the appellant.

[1] Rec., pp. 358–9.

[2] Rec., pp. 271–2: 274.

POINTS AND AUTHORITIES FOR APPELLEES.

I.

Appellant's claim to set-off, against its indebtedness for ore, the damages alleged under the rail contract of December 1, 1883, was properly disallowed in the garnishment proceeding. Under the Illinois statute such a claim could not be set-off by the garnishee, because —

1. Said claim was for unliquidated damages, arising on a contract entirely disconnected with the contract or subject-matter out of which the garnishee's admitted indebtedness arose.

2. It was not an existing debt on July 21, 1884, when the writ of garnishment was served.

Rev. Stat. Ills., Ch. 62, § 13; Ch. 110, § 29 (Cothran's ed., 1887, pp. 756, 1097);
Mich. Cent. R. Co. *v.* C. & M. Lake Shore R. Co., 1 Bradwell, 399;
Clause *v.* Bullock Pr. Press Co., 118 Ills. 617;
Capes *v.* Burgess, 135 Ills. 61, 68;
Evans *v.* Hughey, 76 Ills. 120;
Robison *v.* Hibbs, 48 Ills. 408;
DeForrest *v.* Oder, 42 Ills. 500;
Sargeant *v.* Kellogg, 5 Gilman, 273, 281;
Hawks *v.* Lands, 3 Gilman, 228;
Ellis *v.* Cothran, 117 Ills. 458, 460;
Ryan *v.* Barger, 16 Ills. 28, 30;

Ayres *v.* McConnell, 15 Ills. 230, 233;
Kelly *v.* Garrett, 1 Gilman, 649, 653;
Martin *v.* Kunzmuller, 37 N. Y. 306, 403;
Myers *v.* Davis, 22 N. Y. 488, 493;
Irvin *v.* Wright, 1 Scammon, 135;

See also,

Duncan *v.* Lyon, 3 Johns. Chan. 351, 358;
Mohawk Bank *v.* Burrows, 6 *Id.* 317, 322.

II.

Upon the facts in proof, appellant's petition was properly dismissed. According to the settled doctrine of set-off in equity, appellant is not entitled to the relief here sought.

1. Courts of law and of equity follow the same general doctrines on the subject of set-off. No set-off will be allowed in equity in respect of a demand for uncertain damages arising on a breach of contract, nor in respect of a demand not mutual, or a demand to arise in future; nor in respect of mutual disconnected debts, in the absence of either an express or implied agreement of stoppage *pro tanto* or mutual credit in reference to said debts: nor will courts of equity allow a set-off of debts accruing in different rights, except under very special circumstances, and where the proofs are clear and the equity is very strong. A set-off will be allowed in equity only on some distinct equitable ground: the mere existence of cross demands is not sufficient.

Duncan *v.* Lyon, 3 Johns. Ch. 358;
Hackett *v.* Counett, 2 Edwards Ch. R. 273;

Mohawk Bank *v.* Burrows, 6 Johns. Ch. 322;
Greene *v.* Darling, 5 Mason, 201, 215;
Jeffreys *v.* Agra & Masterman's Bank, L. R. 2 Eq. 674;
Earl of Oxford's Case, 2 White & T. L. Cas. Eq., pp. 1340–41;
Rawson *v.* Samuel, 1 Craig & Phillips, 171;
Wade *v.* Wade & Brown, 12 Ills. 89;
Raleigh *v.* Raleigh, 35 Ills. 514;
Zogbaum *v.* Parker, 55 N. Y. 120;
Scammon *v.* Kimball, 92 U. S. 362;
2 Story's Eq. Jur., §§ 1435–1437.

2. No question of "recoupment" can possibly arise in this case, since defendant's indebtedness, and the damages claimed by it, do not arise out of the same contract. Recoupment and set-off are not the same thing, though treated as such in appellant's petition.[1]

Evans *v.* Hughey, 76 Ills. 120;
Hubbard *v.* Rodgers, 64 Ills. 434;
Bouvier's Law Dictionary, Tit. "Recoupment."

3. No equitable ground of relief is alleged in appellant's petition except the insolvency of the St. Louis Ore & Steel Company, which allegation was completely disproved (*supra*, p. 19).[2] Even had defendant been shown to be insolvent, and had the damages claimed by petitioner been a proper subject of set-off, yet the equity of the Joliet Steel Co. to the benefit of the fund in controversy was certainly equal to that of the North Chicago Rolling Mill Co., both being Illinois

[1] Rec., p. 159.

[2] Rec., pp. 271–2: 274.

creditors, and superior to it in respect of the greater diligence of the Joliet Steel Co. in levying its attachment and promptly reducing its claim against the Ore & Steel Co. to judgment.

Zogbaum *v.* Parker, 55 N. Y. 120;
1 Story's Eq. Jur. (13th ed.) § 64*d*.

But the question of insolvency was a question of fact, to be determined by the chancellor, not as of the date when the petition was filed, but as of the date of the hearing. The intervenor acquired no lien on the fund by filing its petition, and if, when the cause was heard, the defendant was not insolvent, but able to respond in any damages to which petitioner might be entitled at law, there was no ground for relief in equity.

ARGUMENT FOR APPELLEES.

I.

The Circuit Court, at law, properly refused to allow appellant, as garnishee, to set-off its claim for unliquidated damages.

It is not necessary to argue this proposition. The correctness of that ruling depended altogether upon the proper construction of the Illinois statute; and the cases cited under this head (*supra*, p. 20) are conclusive on the point. The rail contract, for alleged breach of which said damages are claimed, being wholly independent of the verbal agreements under which appellant purchased and was indebted for ore and pig metal, and the damages claimed for breach of the former being unliquidated, the case fell directly within the ruling in *De Forrest* v. *Oder*, 42 Ills. 502, *Robison* v. *Hibbs*, 48 Ills. 409, and other cases cited.

In the former, the Supreme Court said:

"The plea is defective in offering to set off unliquidated damages growing out of a breach of contract without showing that it grew out of or was a part of the contract sued upon. Such damages arising out of covenants, contracts or torts not connected with the subject-matter of the suit, do not constitute the subject-matter of a set-off under our statute. *Hawks* v. *Lands*, 3 Gilman, 227."

II.

Courts of law and of equity follow the same general doctrine on the subject of set-off. A set-off will be allowed in equity only on some special equitable ground: the mere existence of cross demands

is not sufficient. No set-off will be allowed in equity in respect of a demand not mutual, or to arise in future, nor in respect of mutual unconnected debts in the absence of an agreement for mutual credit, nor in respect of a demand for uncertain damages arising on a breach of contract.

It will probably be conceded, certainly it will be assumed, for the purpose of this argument, that the claim for damages made by appellant for alleged non-performance by the Ore and Steel Company of the rail contract is a claim for uncertain and unliquidated damages.

In the important case of *Duncan* v. *Lyon*, 3 Johns. Ch. 351, plaintiff sought an injunction to stay proceedings at law to enforce an award made by referees under an order of the Supreme Court, and for an accounting in respect of certain partnership dealings, for a decree for his share of the proceeds of lumber sold and to have that share set off against the damages found by the referees. On this bill a temporary injunction was allowed, which the defendant sought to have dissolved. Chancellor Kent sustained that motion, on the express ground that equity would not allow such a claim to be set off, nor would enjoin proceedings at law for that purpose pending the taking of the account. He said (3 Johns. Ch., p. 357):

"The breaches assigned in the action at law were that the plaintiff had refused to perform his part of the covenant in furnishing timber, provisions, etc., and the demand at law was in the nature of redress for a wrong or injury committed, and not for a debt due. It rested entirely in uncertain and unliquidated damages. There cannot be a set off even of a debt against the demand of the plaintiff, unless that demand be of such a nature that it could be set off by a debt, if it existed in him. There must be mutual debts. This is the settled doctrine in the courts of law. * * * The same rule prevails also in courts of equity. The practice may perhaps be more liberal in

respect to mutual credits, but there is no case in which a set-off has been allowed where the demand was for uncertain damages arising on a breach of covenant. The courts of law and equity follow the same general doctrines on the subject of set-off. * * * (p. 359.) To authorize a set-off, the debts must be between the parties in their own right and must be of the same kind or quality, and be clearly ascertained or liquidated. They must be certain and determinate debts. * * * (p. 360.) If the recovery at law is to be taken under this present motion, as a just recovery, then it would be unreasonable to delay the defendant until the accounts between the parties can be taken and stated and the balance struck in this court. One judgment may be set off against another; but here is a demand on one side raised to a debt certain by a legal assessment, and an uncertain claim on the other, depending on a settlement of accounts. Those accounts were not the subject of set-off, and there is no case to warrant me to stay execution on the one demand until the other is settled, and *in a condition to be set-off*. * * * The motion to dissolve the injunction must be granted."

In *Mohawk Bank* v. *Burrows*, 6 Johns. Ch. 317, 322, there came before the same chancellor a petition for leave to set off certain claims against a judgment upon which an attorney had a lien. The defendant was insolvent, and the claim sought to be set off was a claim for contribution, which was quite unsettled. The petition was denied, the chancellor affirming the decision in *Duncan* v. *Lyon* and repeating the statement that "there is no case to warrant the delay of satisfaction of a judgment debt on one side until an unsettled demand on the other is reduced to certainty and in a condition to be set off."

In *Hackett* v. *Connett*, 2 Edwards Ch. R. 73, decided by Vice-Chancellor McCoun, it was held:

"The court of chancery extends the principle (of set-off in equity) no further than a court of law under the statute

of set-off. *Duncan* v. *Lyon*, 3 Johns. Ch. 351. Although chancery has sometimes exercised the power of decreeing a set-off before or independently of the statute, it has only done so where mutual debts existed and where there was either an express or implied agreement of stoppage *pro tanto* of mutual credit. Here, at the time of the assignment, there were not mutual debts, much less a mutual credit. There was only a debt on one side, and on the other a claim sounding in damages, which, when it became liquidated by a verdict and judgment so as to admit of set-off, belonged to another person. There is no such thing as an inherent quality or right of set-off in the creation or origin of a debt or demand. It can only arise or attach where there is a mutuality of debts of such a certain and ascertained character as to be capable of set-off or of being applied in compensation of each other Hence, there was no equity of this sort to which the assignment in question could be subjected. The whole doctrine of set-off was critically examined by Judge Story in *Greene* v. *Darling*, 5 Mason's R. 202, and I had occasion to apply the principles laid down by him in the case recently before me of Wollcott *v.* Sullivan (1 Edwards Ch. R. 399)."

The case of *Greene* v. *Darling*, 5 Mason, 201, thus referred to, contains a critical examination by Justice Story of the doctrine of set-off in equity, too long for quotation here, but to which the Court is respectfully referred. The court said, among other things (p. 206):

"There is a great distinction between the case of an equity attaching to *the very demand assigned* and an equity personally existing in the debtor to set off *an unconnected debt*. * * * (p. 212.) The conclusion which seems deducible from the general current of the English decisions (though most of them have arisen in bankruptcy) is that courts of equity will set off distinct debts, where there has been a *mutual credit* * * * (p. 214.) Where a chose in action is assigned, it may be admitted that the assignee takes it subject to all the equities existing between the original parties as to that very chose in action; so assigned.

But that is very different from admitting that he takes subject to all equities subsisting between the parties as to other debts or transactions. * * * (p. 215.) But it is said that the right of set off is an equity which at all events the original debtor may assert against the assignor and also against his assignee of the debt, whether he has or has not notice of its existence. If by an equity is meant a mere dictate of natural justice in a general sense, it is not worth while to discuss it, because this court is not called upon to administer a system of mere universal principles. If by an equity is meant a right which a court of equity ought to enforce, it remains to be proved that such an equity exists in the jurisprudence which this court is called upon to administer."

In that case the insolvency of the defendant Darling was one ground of relief alleged in the bill; but it was held not sufficient, and the relief was denied.

Eight years later, the doctrine of equitable set-off was again thoroughly considered by Mr. Justice Story in *Howe* v. *Sheppard*, 2 Sumner, 409. It was held, affirming *Greene* v. *Darling*, and citing approvingly Chancellor Kent's decisions in *Duncan* v. *Lyon*, 3 Johns. Ch. 358, and *Dale* v. *Cooke*, 4 Johns. Ch. 14, that

"The known rule in courts of equity is that they follow the law in regard to matters of set-off, unless there is some intervening natural equity going beyond the statutes of set-off which constitutes the general basis of set-off at law" — — but the only case of "naturale quity" mentioned is that of mutual credits given or agreed for.

In this case also the fact of insolvency was urged as a ground of relief. The equitable set-off prayed for was denied on other grounds, but the court plainly intimated that insolvency would not have sufficed, referring as follows (p. 416) to the case of *Simpson* v. *Hart* (14 Johns. Rep. 63):

"The decision in Simson *v.* Hart (14 John. R. 63), carries with it the appearance of being in conformity to the principles of natural equity and justice. But this alone is not sufficient to bring the case within the jurisdiction of courts of equity for relief; since there are many principles of natural equity and justice which are not attempted to be enforced therein. I have not been able to satisfy my own mind, that any such general principle of relief, by way of set-off, has been administered in courts of equity, founded upon the mere insolvency of the party, as that case supposes. On the contrary, after no inconsiderable research, I felt myself compelled to come to a very different (though not to an opposite) conclusion, in Green *v.* Darling (5 Mason R. 145). My subsequent researches, which have been more extensive, have not enabled me to detect any error in that opinion, or to find in English jurisprudence a single decision, which countenances any such equity for a set-off. In the elaborate judgments of Mr. Chancellor Kent, where the subject has several times undergone a very full review both of the principles and authorities, there is a total silence on the same point."

In addition to this high authority, the proposition above laid down will be found, we submit, to be fully sustained by the other cases cited *supra*.

This court, in *Scammon* v. *Kimball*, 92 U. S. 362, thus defines the right of set-off and thus states the general rule, both at law and in equity:

"Whether the suit be one at law or in equity, set-off must be understood as that right which exists between two parties, each of whom, under an independent contract, owes *an ascertained amount* to the other, to set-off their respective *debts* by way of mutual deduction, so that, in any action brought for *the larger debt*, the residue only, after such deduction, shall be recovered. Adams Eq., 6th Am. ed. 447.

"Courts of equity, following the law, will not allow a set-off of a joint debt against a separate debt, or of a separate debt against a joint debt; nor will such courts

allow a set-off of debts accruing in different rights, except under very special circumstances, and where the proofs are clear and the equity is very strong. 2 Story Eq., 6th ed., sec. 1437."

The Supreme Court of Illinois, in *Wade* v. *Wade & Brown*, 12 Ills. 88, 91, refused to allow a demand, though evidenced by a promissory note, to be set-off in equity against a judgment, although insolvency and non-residence were urged as grounds for relief, saying:

"It is alleged that the respondent is not a resident of the State, and that he has not any means from which the amount of the note can be collected; but we have not anything presented to us which shows that this was not equally the case when the judgment was rendered. The demand sought to be set-off against the judgment is unliquidated and open to controversy, and we are asked first to try the suit upon the note and then to set-off the amount found to be due against the judgment. It is not within the ordinary jurisdiction of this court to try an action of *assumpsit* upon a note, and then set-off the judgment recovered upon it against another judgment, merely because the maker of the note has not available means to satisfy his creditor, and this will not be done unless some special circumstance is presented to justify the proceeding."

The case of *Buckmaster* v. *Grundy*, 3 Gilman, 626, was distinguished because that involved an accounting as to partnership transactions, a subject properly within the jurisdiction of equity. The decree below, dismissing the bill, was affirmed.

The same court, in *Raleigh* v. *Raleigh*, 35 Ills. 512, 514, thus stated the rule as to equitable set-off:

"Courts of equity will not enforce a set-off not allowed by law unless the party seeking it can show some equitable ground for being protected against his adversary's demand. The mere existence of cross demands is not suffi-

cient. *Rawson* v. *Samuel*, 1 Craig & Phil. 161; *Dodd* v. *Lydall*, 1 Hare, 337; *Gordon* v. *Pyne*, 3 Id. 223; *Dade* v. *Erwin's ex'or*, 3 How. 338; 2 Story's Eq., § 1436.

In that case the set-off was allowed, on the sole ground that the bill alleged and the demurrer admitted that there was a distinct agreement between the parties that the one debt should be applied in satisfaction of the other, — in other words, a case of express mutual credit. As insolvency was not alleged in the bill, the allusion of the court to the ruling in *Gay* v. *Gay*, 10 Paige, 376, was not even a *dictum*. But since the proof here is explicit (*supra*, p. 19)[1] that long before the decree here appealed from was rendered the St. Louis Ore and Steel Company had resumed business, had recovered its property and was entirely solvent, the question of relief on the ground of insolvency does not arise in this case.

III.

Appellant's contention as to insolvency and non-residence is not valid under the facts in proof in this case.

During the preparation of this brief, appellee's counsel received from the counsel for appellant a copy of their brief: from which it appears in effect, that the sole ground upon which it is now sought to reverse the decree below is that the St. Louis Ore and Steel Company was insolvent and a non-resident; and that since this made it impossible for appellant to recover the damages claimed by it unless by means of the equitable set-off prayed for, that is a sufficient ground of equity for such relief.

In support of this claim, numerous cases are cited and commented on at much length.

[1] Rec., pp. 271–274.

It is a remarkable feature of the argument for appellant that it practically ignores the opposite state of facts proved to exist, not only when the decree appealed from was rendered, but for more than a year prior thereto. It is respectfully submitted that the following allusion to that state of facts falls very far short of what the record discloses (appellant's brief, p. 8):

"The fact that pending the litigation the company may have succeeded in compromising its indebtedness, and thus restoring itself to a position of *nominal solvency*, cannot affect the equities arising from the insolvency which undoubtedly existed when the petition was filed. We shall assume, therefore, in our further discussion of the case that the St. Louis company was insolvent *when the petition of the Chicago company was filed.*"

The contention seems to be about this: that when a complainant seeks the aid of a court of equity, by way of injunction to forbid the collection of a judgment at law regularly obtained, on the ground that it has an unliquidated demand against the judgment creditor which *it cannot collect* unless allowed to set-off such demand against the judgment, it is sufficient to show that this state of facts *once existed*, though it *no longer exists;* and that a court of equity will sustain such a plea, on grounds of "natural justice," shutting its eyes to the fact that the state of things upon which such plea is founded no longer exists, that it is not impossible, as alleged, for the complainant to completely assert its rights and recover what may be justly due to it, by an action at law, and that therefore the very ground upon which the interposition of equity is prayed has disappeared.

It is respectfully submitted that a statement of this proposition is a sufficient reply to it, in a court of equity.

Not only the cases above cited, but the cases cited by

the appellant, so far as the question of insolvency is concerned, all proceed upon the express assumption that by reason of such insolvency the complainant is and will be absolutely unable to enforce a just claim, unless by way of equitable set-off, — not that it was unable to enforce it at some former time, but that it is *now unable to enforce it*, and that unless the relief prayed for be granted, *its demand will be irrecoverably lost*. Nothing less than this would sustain such a plea, nor would reconcile the cases in which it has been allowed, either with the doctrine of this court, above referred to, or with the strong and carefully considered decisions of Mr. Justice Story and Chancellor Kent above cited.

The case of *Schuler* v. *Israel*, 120 U. S. 506, 510, seems to be the authority most relied on for appellant. But the passage quoted (appellant's brief, p. 20) from Mr. Justice Miller's opinion is admitted to have been merely "incidental to the point decided in that court,"— that is, as the opinion shows, simply a *dictum*, couched in the most general terms. Giving to that general statement all weight to which it may be entitled, it is inapplicable on its face to any case in which the complainant should fail to allege and prove, not merely that the demand sought to be set-off was at some former time in danger of being lost, but that it had become and continued to be in fact irrecoverable unless the set-off were allowed, because the judgment creditor was in fact insolvent *at the time when the relief prayed for was to be made effectual.*

A fortiori must this be true, when a court of equity must, if the set-off be allowed, thereby deprive the opposing claimant of all benefit from a judgment recovered by him in the exercise of superior diligence. In such case, the pithy comment of the court in *Zogbaum* v. *Parker*, 55 N. Y. 120, above referred to, is directly in point.

The same assumption plainly underlies the ruling in each

one of the other cases cited for appellant. It is equally true as to every one of those cases, even without taking into consideration any other special grounds upon which they were decided, that the ruling therein made is wholly inapplicable to a case in which, at the time of making the decree, an opposite state of facts existed.

Nor, in view of the facts in proof here, is the fact that the St. Louis Ore and Steel Company was a Missouri corporation, sufficient to justify the reversal of this decree on that ground. It is true that the St. Louis company was a non-resident corporation: but it is also true that from the 29th of September, 1884, when the Illinois (Olyphant) suit was brought, until its plea in bar to the Olyphant bill of complaint was sustained and that suit dismissed [1] (May 16th, 1887), on the ground that all demands against it had been settled except the question presented by this intervening petition, there were under the control of the U. S. Circuit Court at Chicago, in charge of its receiver, other assets, within that district, subject to be applied by the order of that court on the intervening petition of any creditor, to payment of any just demand against said company.

The record shows [2] that the St. Louis company held demands on acceptances and otherwise, against Cherrie & Co., of Chicago, growing out of their failure in July, 1884, amounting to over $106,000; $42,000 of which were held by the receiver as such, other parties having claims upon the remainder.

In August, 1886, by authority of the court in Illinois, these claims were compromised by its receiver at fifty cents on the dollar, for which secured notes were taken, approved by that court, amounting to $53,000 in all, of which $21,000 were in satisfaction of the claims repre-

[1] Rec., pp. 227: 237. [2] Rec., pp 196-207.

sented by the Illinois receiver as such. These notes were deposited by the receiver in the First National Bank of Chicago, for collection. The order of May 16, 1887, discharging the receiver,[1] directed him to pay the money collected on them to the St. Louis Ore and Steel Company; and his final account, approved June 16, 1887,[2] shows that on June 1, 1887, he collected the last instalment of said notes, amounting to $53,000 in all, for the benefit of that company in Missouri.

It does not appear that any effort was made by appellant to subject this $21,000 of assets, actually in the hands of the receiver in Illinois and under the control of the court there, to the payment of its alleged demand for unliquidated damages; nor, although it had become a party to the suit, and was directly affected as intervening petitioner by the final decree of May 16, 1887, that it made any objection to the transfer of that fund from Illinois to Missouri, or any application to that court to subject it to said demand.

In view of these facts, it is respectfully submitted that it is not open to to the appellant to claim the assistance of a court of equity on the ground that the St. Louis Ore and Steel Company was a non-resident. This fund of $21,000, actually held by the court in Illinois, through its receiver, was directly applicable to any and all just demands against the St. Louis Company; but appellant sought no benefit from it, and acquiesced in its being paid over to the Ore & Steel Company, in Missouri. As between appellant and the Joliet Steel Company, which had diligently asserted its rights and recovered a judgment at law, the equity in this regard also was clearly in favor of the latter.

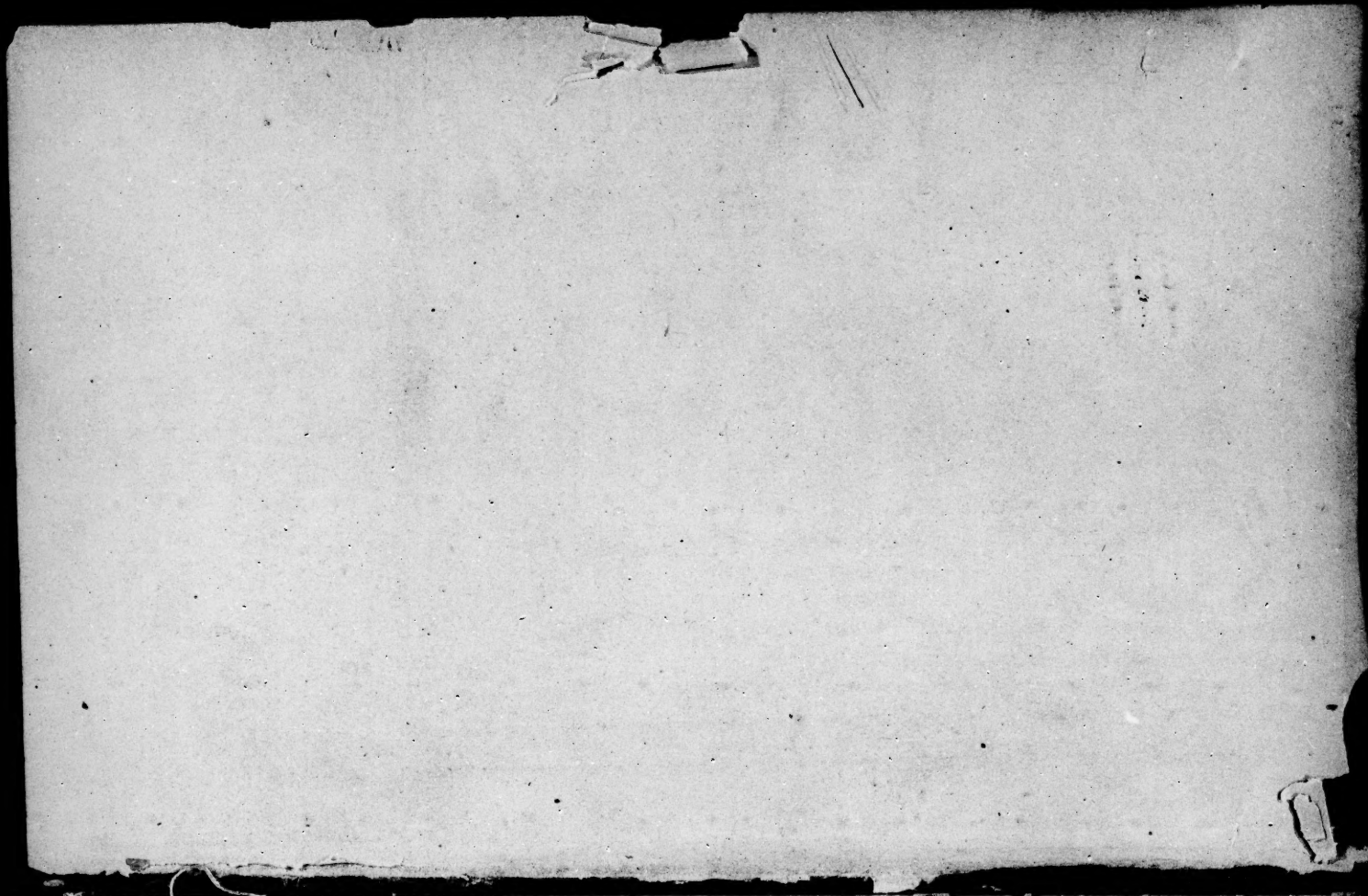
It is not necessary to discuss before this court, in detail, the cases in which courts of equity have exercised the important and delicate power of restraining the en-

[1] Rec., p. 237. [2] Rec., pp. 245–6.

forcement of a judgment at law, regularly obtained, free from any suspicion of fraud or bad faith. The power is unquestionable; its application, under proper circumstances, is familiar; but since the facts in every case differ from those of every other, it goes without saying that each must be decided upon the facts peculiar to it. Few arguments are more fallacious than those which are based upon the sweeping application of a general rule, justly applied to one state of facts, to another state of facts differing from it in essential particulars.

Upon the facts in this case, and the general considerations above presented, it is confidently submitted that the decree below should be affirmed.

HENRY HITCHCOCK.
Of Counsel for Appellees.



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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

No. 197.

NORTH CHICAGO ROLLING MILL COMPANY,
Appellant,

vs.

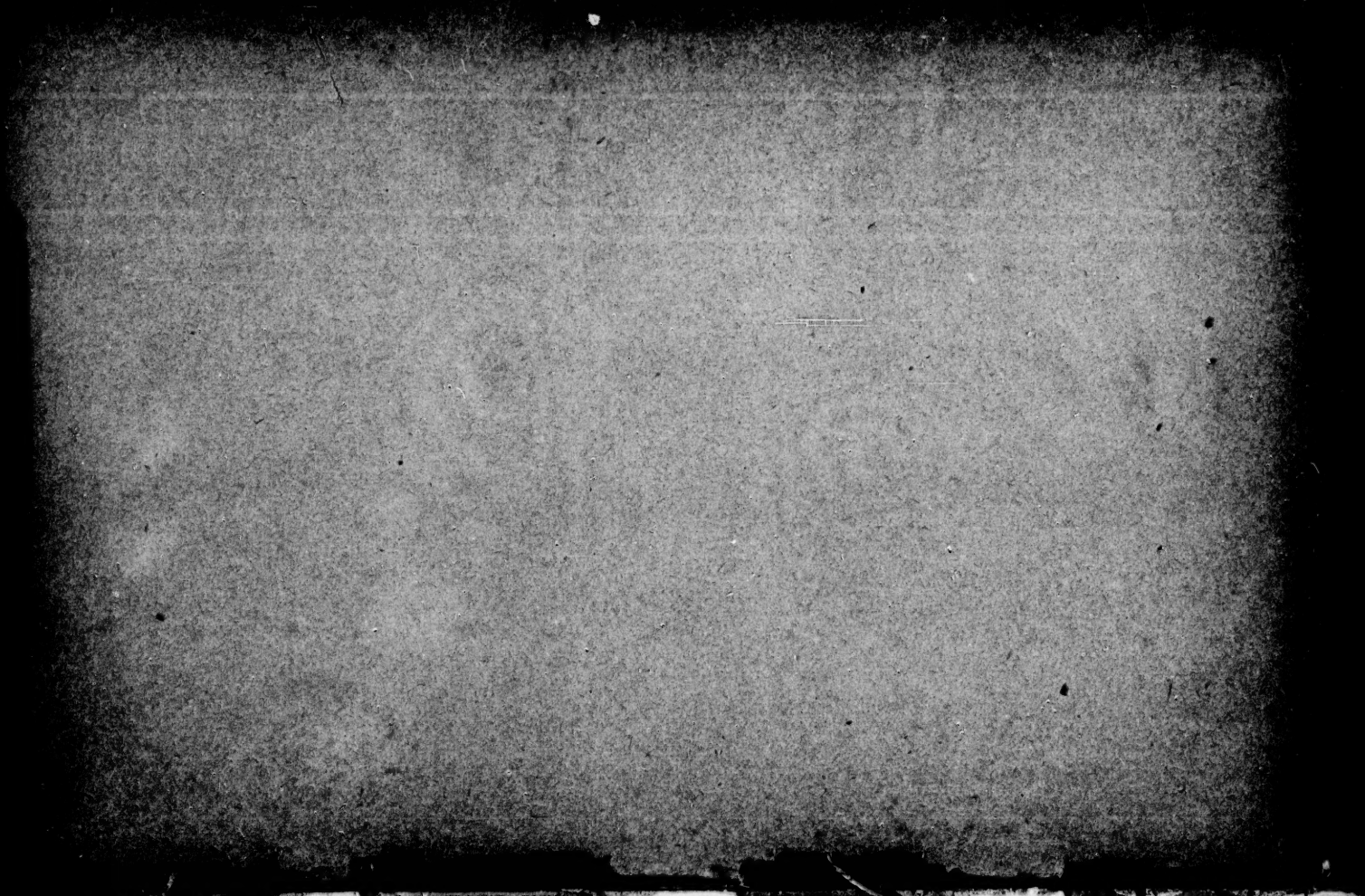
ST. LOUIS ORE & STEEL COMPANY AND DAVID K, FERGUSON,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

REPLY FOR APPELLANT.

CHARLES S. HOLT,
E. PARMALEE PRENTICE,
Of Counsel.

BARNARD & GUNTHORP, PRINTERS, CHICAGO.



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The ground of possible contention between the parties is greatly narrowed by the brief filed on behalf of appellees. It seems to be now conceded that the North Chicago Rolling Mill Company (spoken of in the briefs as the Chicago Company) when the intervening petition was filed, had a valid claim against the St. Louis company for damages for non-performance of the rail contract. The amount of such damages was unliquidated, but no criticism is made upon the measure of damages adopted by the Chicago Company, or upon the amount thus arrived at. Indeed it is difficult to see how any valid criticism could be made. Mr. Potter testifies, without dispute, that the figures were reached by taking the difference between

the contract price for the sale of rails to the St. Louis Company, and the price actually realized for the same quantity and quality of rails, which the Chicago Company was obliged to sell elsewhere after the contract was broken by the St. Louis Company. This amount, $28,390.16, stands virtually admitted, therefore, as the true amount of the Chicago Company's damages.

Again, no attempt is made to dispute that the St. Louis Company was insolvent when the intervening petition was filed. The brief of appellees contains the statement (page 22) that the allegation of insolvency "was completely disproved;" but by reference to the record pages there cited, it will be found that the supposed proof of solvency relates not to the date when the petition was filed, but to a time long subsequent, viz., January, 1888. The discussion on page 32 of the brief and following pages, is all based on supposed solvency *arising after the petition was filed*, and can only be interpreted as an admission of insolvency at the earlier date.

With these points admitted, our reply may be arranged under three heads.

1. There was complete equitable jurisdiction when the petition was filed, both on the ground of insolvency and of non-residence.

2. The restoration of solvency pending the suit did not oust the jurisdiction in equity.

3. The non-residence of the St. Louis Company, as a ground of equitable jurisdiction, is not affected by any facts shown in the record.

I.

We have no disposition to cite additional cases to show the jurisdiction of the court of equity over the subject-matter of this proceeding when the proceeding was instituted.

It will be remembered that the intervening petition now stands as an original bill, and that the court has personal jurisdiction of the parties by their voluntary appearance.

It is equally unnecessary to make extended comment on the cases cited by appellees on the question of the right of set-off in equity. We have sufficiently shown in our former brief that the early doubts of Judge STORY have been disregarded by nearly all courts and with increasing unanimity, and in so far as Chancellor KENT was impressed with the same doubts, his view was not shared by his eminent successor, Chancellor WALWORTH, or by the court of the present day, as shown in the cases cited in our former brief from 115 and 119 New York. It was twice decided in New York cases (2 Paige, 581; 10 Paige, 369), that unliquidated damages are the subject of set-off in equity, and the same point is decided in Illinois and elsewhere, as shown by the cases cited in our former brief.

Moreover, the decision of Chancellor KENT in *Duncan* v. *Lyon*, was not based on any allegation of insolvency, and does not amount to a decision of the question here involved.

It is somewhat entertaining to find *Scammon* v. *Kimball*, 92 U. S., 362, cited on this proposition. The question of liquidated or unliquidated damages was not before the court in that case, and the only rule laid down was one which we most assuredly have no desire to question, viz., that claims *can* be set off in equity where they are mutual and in the same right, even though arising out of wholly disconnected transactions—

in that case a deposit in bank against the banker's losses on policies of insurance issued by the depositor. By way of exception, it was held that a liability for unpaid subscription to the stock of the insurance company was affected with a trust character, not purely personal to the company, but belonging also to its creditors, and hence not the subject of set-off against the subscriber's losses by fire, because not owing in the same right.

It is still more diverting to find cases in 12 and 35 Illinois cited as denying the right of set-off in equity on the ground of insolvency, (although the case in 35 Ill. asserts that right in express terms, however unnecessarily); while an ominous silence is maintained about the express decisions to the contrary in 77, 86, 101 and 105 Ill.

II.

The real contention of appellee's brief, and the only one which appears to be urged with any seriousness, is that the jurisdiction in equity, though perfect at the commencement of the proceeding, was defeated by the alleged restoration of solvency about two years later. It will be noticed that the earliest date shown in the record when restored solvency is even suggested, is March 28, 1887, when the plea of the St. Louis Company was filed, not to the intervening petition, but in the main suit, setting up that a settlement had been reached with the bondholders. This plea was sustained on May 16th of the same year, and the bill dismissed. The inference of restored solvency from these proceedings is not strong at the best, and the earliest date when there is an attempt to show solvency by affirmative proof, is January 14, 1888. Whichever of these dates be adopted, it is plain that insolvency existed when the petition was filed, in January, 1886, and continued for at least fifteen months thereafter.

There is a technical difficulty in the way of appellees' argument, upon which we find it unnecessary to dwell at length, because the substantial obstacles are still more insuperable. It is worth mentioning, however, that *no supplemental pleading of any kind* was filed on behalf of the St. Louis Company setting up the restoration of solvency pending the suit; that such restoration was never in issue between the parties to this appeal, and that the evidence of Mr. Garrison on that subject, which was admitted over the objection of the Chicago Company, has no pleading to support it. It is familiar law that evidence without pleadings is as unavailing as pleadings without evidence, and equally familiar that matter arising after the commencement of a suit must be set up either by plea, answer, or, as the better doctrine seems to be, by supplemental cross-bill.

"If the matter of defense arises after the case is at issue, as if the plaintiff has given the defendant a release, or if there has been an award made on a reference after issue joined * * * (all of which at law may be made the subject of a plea *puis darrein continuance*), a defendant in equity cannot avail himself of either of these defenses by plea or answer, and, therefore, he must make them a subject of a cross-bill. Thus where, pending a suit and after replication and issue, the defendant, having obtained a release, attempted to prove it *viva voce* at the hearing, it was determined that the release not being in issue in the cause, the court could not try the fact or direct a trial at law for that purpose, and that a new bill must be filed to put the release in issue. * * * It was clearly determined that without being put in issue in the cause by a new bill, it could not be used in proof." Story Eq. Pleadings, § 393.

See *Smith* v. *Smith*, 4 Paige, 432, where Chancellor WALWORTH held that adultery committed by the complaining husband pending his suit for divorce, must be set up by the wife by supplemental answer, or by "cross-bill in the nature of a "plea *puis darrein continuance*."

Hayne v. *Hayne*, 3 Rep. in Chy., 19.
Burdell v. *Burdell*, 2 Barb. (S. C.), 474.

An injunction will not be dissolved on affidavits showing matter of defense arising after answer filed, but such matters must be set up by supplemental answer or cross-bill.

WIGRAM, V. C., and COTTENHAM, L. C., in *Stamps* v. *Birmingham Ry.*, 2 Phil., 672.

But, without reference to the question of pleading, equitable jurisdiction cannot be ousted by matter *arising after the suit was commenced, and not going to the merits of the plaintiff's case.*

It will be observed that the question here at stake is not whether the claim of the petitioner is valid and meritorious, but the purely technical question whether it shall be enforced in a court of equity, or in a court of law. The court of equity has assumed jurisdiction on the ground that there was no adequate remedy at law. That the petitioner properly went into equity in the first place is conceded by the hypothesis. The position is, therefore, that although he was properly in equity, and had been put to the expense and labor of introducing his proof, yet upon the restoration of solvency he must be dismissed from the court of equity, and required to introduce *the same proof against the same parties upon the same issue, but on the other side of the court*! We do not hesitate to quote the language of appellee's brief when we say: "It is respectfully submitted that a statement of this proposition is a "sufficient reply to it in a court of equity."

It is freely conceded that if matter had arisen pending the suit, *which went to the merits of the petitioner's claim*, and made it inequitable that the set-off should be allowed at all, it would have been open to the defendant to show such matter under appropriate pleadings. But that a plaintiff, who has been driven into equity by the admitted insolvency of the defendant, shall be driven out of equity again, perhaps at the moment

when his case is ripe for hearing, and forced to prove the same case over again, for no other reason than that the defendant has meanwhile compromised with other creditors and become solvent, is too monstrous a proposition for serious debate. It is by no means a violent supposition that the restoration to solvency might be delayed until after the statute of limitations had run, so as to bar a proceeding at law. Neither is it at all impossible that, after plaintiff has left the court of equity and commenced a suit at law, the condition of insolvency might return, before judgment and satisfaction could be obtained. Would the equitable jurisdiction then revive? Or will counsel contend that by such legerdemain the plaintiff may be barred of his claim altogether?

The iniquity of the position is so apparent, and the authorities against it are so numerous and well settled, that we had not supposed it necessary to argue the point. Since, however, so much stress is laid on it by counsel for appellees, we may be pardoned for citing a few of the many cases to show that a court of equity having once obtained jurisdiction will not be ousted of jurisdiction by matter arising pending the suit; at least, where such matter does not go to the merits, but only affects the forum in which relief is to be administered.

It would probably be sufficient in this court to cite the single case of *Clark* v. *Wooster*, 119 U. S., 322. In that case a bill was filed to enjoin infringement of a patent, and for an accounting of profits as incidental to the equitable relief by injunction. Long before final hearing, the patent had expired, so that no equitable relief could possibly be administered. It was urged that equitable jurisdiction thereupon ceased, and that the complainant must be left to his remedy at law for damages. But the court, by Justice BRADLEY, says:

"*If the case was one for equitable relief when the suit was in-*

stituted, the mere fact that the ground for such relief expired by the expiration of the patent, would not take away the jurisdiction, and preclude the court from proceeding to grant the incidental relief which belongs to cases of that sort. This has often been done in patent causes, and a large number of cases may be cited to that effect; (citing cases). It is true that where a party alleges equitable ground for relief, and the allegations are not sustained, as where a bill is founded on an allegation of fraud, which is not maintained by the proofs, the bill will be dismissed *in toto*, both as to the relief sought against the alleged fraud, and that which is sought as incidental thereto."

This decision has never been questioned, and has been both anticipated and followed in a great number of cases at circuit. The distinction found in the last sentence quoted, emphasizes the view we are here insisting upon. If, for example, the intervening petition had proceeded solely on the ground of the insolvency of the St. Louis Company, and the *proof had failed to show that insolvency existed when the petition was filed*, then the principle stated by Justice BRADLEY above would perhaps have prevented the court of equity from retaining the case and assessing the damages. But here we have insolvency admitted, and the equitable jurisdiction properly invoked; so that the case falls exactly within the terms of the first sentence quoted.

A strictly analogous principle is constantly acted upon in cases of specific performance. Thus, it is stated by Mr. Pomeroy:

"When the impossibility of specific performance is disdisclosed at the hearing, and the suit was brought in ignorance of the fact, the court of equity will award damages." (Pomeroy Eq. Jur., § 1410.)

There has been some contention and difference of opinion among courts as to the limitsof this principle. Lord Eldon doubted whether damages could be awarded in equity in lieu of specific performance, where the im-

possibility of performance existed at the time suit was brought, even though the complainant was ignorant of it. Even this doubt has been set at rest by the overwhelming weight of authority in this country, but that is immaterial here, for there never has been any dissent from the proposition that where the impossibility of performance *arises after suit brought*, compensation will be decreed in equity, and the plaintiff will not be remitted to a suit at law for his damages. A few out of the multitude of cases on this subject may profitably be cited.

This court has applied the principle, in *Pratt* v. *Law*, 9 Cranch, 492–3. It was there said: "*Specific performance*, such as would answer the ends of justice between these parties, *has now become impossible.* [*i. e.*, by occurrences pending the suit.] Carroll's property is resumed; a large proportion of the land purchased of the commissioners sold under legal process, etc. etc. An issue *quantum damnificatus* it is certainly competent to this court to order in this case; *but it is not consistent with the equity practice to order it in any case in which the court can lay hold of a simple, equitable and precise rule to ascertain the amount which it ought to decree.*"

Still less would it have been consistent with equity practice to remit the plaintiff to his independent action at law.

In a well-considered case in Maine it is said that money damages will be awarded in equity "when specific performance ought to have been and could have been decided *upon the state of facts existing when the bill was filed*, but cannot be decreed on a hearing of the cause, because the defendant, pending the suit, has voluntarily disenabled himself to make a conveyance."

Woodman v. *Freeman*, 25 Me., 543.

The Massachusetts Supreme court has considered the question more than once. In an early case, on bill for specific performance, with a prayer that if defendant has put it out of his power to perform, damages be awarded, the court speaks as follows:

"Judge STORY expresses the opinion 'that the jurisdiction for compensation or damages does not ordinarily attach in equity, except as ancillary to specific performance or to some other relief, and that, if it does attach in any other cases, it must be under special circumstances and peculiar equities, as, for instance, in cases of fraud, *or where the party has disabled himself by matter post facto* from a specific performance.' And we are of the same opinion, with this qualification, however, that, *if the learned commentator intended to express a doubt whether a court of equity had jurisdiction to decree compensation in the cases last stated, we cannot concur in the doubt.*"

Andrews v. *Brown*, 3 Cush., 135.

In a recent and very thorough-going decision, the same court says:

"It is settled, with little or no conflict of authority, that when a defendant in a bill in equity disenables himself, pending the suit, to comply with an order for specific relief, the court will proceed to afford relief by way of compelling compensation to be made. * * * There is also authority, though apparently questioned in the English decisions, for the application of the same rule when the disability was caused before suit, but after the date of the agreement relied on. In this country it seems to be generally accepted as the rule, provided the plaintiff brought his bill without knowledge of the disability, in good faith seeking equitable relief, supposing and having reason to suppose himself entitled to such equitable relief."

Milkman v. *Ordway*, 106 Mass., 253.

The rule, as will be seen, does not rest upon the fact that impossibility of performance results from the voluntary act of a party to the suit. It applies where the impossibility is caused by natural agencies.

In *Chapman* v. *Mad River R. R.*, 6 O. St., 119, 139, parties who had contributed financial aid to construct a railroad in consideration of its benefiting a particular place, and furnishing facilities to the donors, filed a bill to enjoin the managers

of the road from building a competing road under the guise of a separate corporation, for the purpose of drawing business away from the old road and allowing the latter to go to decay. Pending the suit, the old road did in fact go to decay, so that an injunction would have been a useless remedy. The court, nevertheless, retained the suit for relief by way of money damages, saying:

"It seems to be well settled that where it is found that *a complainant was originally entitled to a specific performance, but, pending the litigation, the very subject-matter of the agreement*, to which the complainant is found to be entitled, *is abstracted or destroyed*, a court of equity will not turn him over to seek his damage in a court of law, but will afford a remedy by compensation. * * * Now the case before us seems to come fairly within this principle. The complainants demand the continued use of the line of railroad by way of Bellevue. To this, by the letter and spirit of their contracts, they were fairly entitled. But, *pending the proceedings, this line has gone to decay*; the means and credit of the company have been elsewhere exhausted; the repair of the old line would involve the necessity of an immense expenditure, which the company, even if we were to decree the injunction prayed for, would have no interest in making, and which we would have no power to enforce. In this way *the subject-matter of the contract has been substantially annihilated and nothing remains to us but to award the complainants a remedy by compensation.*"

A recent decision in the Court of Appeals of New York illustrates the principle in a case of another kind. A suit was brought on the equity side of the court to enforce payment of a legacy, which by the terms of the will was made a charge on certain real estate, and the proceeds thereof. It turned out that the executor had sold the land and misappropriated the money, so that the only relief possible was a personal judgment against him. It was thereupon insisted that the case was not of equitable cognizance. But the court of Appeals by FINCH, J., held otherwise, saying:

"The case was tried at special term. At the outset the defendants objected to the tribunal 'as an improper one for the trial of any question involving a personal judgment,' and 'demanded that if such question was to be tried it should be by a jury trial.' This objection was not that the case as disclosed by the pleadings was only triable by a jury. It looked *not to the case as presented by the complaint, but as it might possibly be decided at the end. Such an objection is wholly unsound. It conceded that the action as it came into court was of an equitable character, as it certainly was, but insisted that if the final relief was to be a personal judgment, the case was one for a jury. A court of equity does not in that manner lose its jurisdiction, and having once acquired it, retains it to the end, even though it may turn out that adequate relief is reached by a mere personal judgment. That is not an uncommon occurrence.*"

Van Rensselaer v. *Van Rensselaer*, 113 N. Y., 213.

This decision was cited with approval in

Lynch v. *R. R. Co.*, 129 N. Y., 280.

Several courts have gone much farther than is necessary in this case, and held that even where it turns out that there *never was* any ground for equitable interference, still, the bill having been filed in good faith, with reasonable ground for invoking the aid of equity, the case will be retained for the assessment of damages.

In *Hopkins* v. *Gilman*, 22 Wis., 476, there was a bill for specific performance of an agreement to renew a lease, at a rental to be fixed by arbitration. *Held*, that a court of equity will never specifically enforce an agreement to arbitrate, and therefore can make no decree here.

But,

"Although the facts alleged are insufficient to justify a decree for specific performance, yet we think a court of equity may retain the suit for the purpose of awarding compensation for the value of the improvements. Undoubtedly an action for damages for non-performance of the contract would be the

usual remedy. But must the suit be dismissed and the plaintiff turned over to that remedy alone? It seems to us not."

And the Superior court of New York, following the intimation of the *Van Rensselaer* case, *supra*, has held that where a bill was filed for injunction and damages for breach of contract, and the court, on hearing, denied the injunction, still, as the result was "*not self evident, but reached only after judicial* "*investigation*," the suit would not be dismissed but retained for the assessment of damages.

Thorne v. *French*, (1893) 25 N. Y. Sup., 694.

III.

Counsel for appellees seems to blow hot and cold on this argument. For whereas, with respect to the question of insolvency, he vehemently insists that the rights of the parties must be governed by the state of facts existing, not at the date of filing the petition, but *at the date of the decree*, when it comes to the question of non-residence, he endeavors to rely upon facts alleged to have existed, not when the decree was entered, nor when the petition was filed, but *for a part of the interval between those dates.*

The St. Louis Company was a non-resident when the petition was filed, and under the authorities cited, the petitioner was not obliged to follow it into a foreign jurisdiction, but might assert its counter-claim in equity. When the decree was entered, or in the language of counsel for appellees, "at "the time when the relief prayed for was to be made ef- "fectual," the St. Louis Company was likewise a non-resident, and under the authorities, if the rights were to be determined as of that date, the jurisdiction of equity would be fully supported. Neither is it alleged that at any intermediate time the St. Louis Company was a resident of the State of Illinois,

nor even that it had in its own possession any money, property or assets within the State of Illinois. But it is said that in August, 1886, the receiver of the St. Louis Company came into possession of certain secured notes which, of course, he held under orders of court for the benefit of creditors; and by some process of reasoning which we are unable fully to apprehend, it is claimed that the petitioner was bound to abandon its pending proceeding, in which there was undoubted equitable jurisdiction, and commence some other proceeding at law or in equity, upon the same cause of action, to reach these notes in the possession of the receiver, and subject them to the payment of its claim. We confess ourselves unable to make any serious reply to this proposition. Did the receiver's possession of assets from August, 1886, to June, 1887, alter the fact that in January, 1886, when the petition was filed, and in 1889, when the decree was entered, the St. Louis Company was a non-resident of Illinois without assets in the state? And how, let us inquire, could the petitioner have asserted more effectually its right to the $21,000, or any other assets of the St. Louis Company, which came into the state in the mean time, than by prosecuting, as it did prosecute with diligence, its pending suit in the same court and as a part of the same proceeding in which the receiver was appointed, in which suit the St. Louis Company had personally appeared by counsel, and in which the petitioner prayed not only for a set-off, but for a decree *in personam* for the excess of its claim? It is not by such arguments as these that the right to enforce an equitable set-off against the St. Louis Company on the ground of non-residence, can be defeated.

Of course all the authorities above cited, holding that equity having once properly obtained jurisdiction will retain it, are equally applicable to this branch of the argument. It is not pretended but that when the petition was filed, the St. Louis

Company was a non-resident in such a sense as to give equitable jurisdiction. Even if the possession of assets in the state at the time the petition was filed could have defeated the equity jurisdiction, certainly the acquisition of such assets pending the suit, under the authorities quoted, can have no such effect.

We find in appellee's brief a dim allusion to some supposed rights of the Joliet Steel Company, as an Illinois creditor, in virtue of its superior diligence. As nearly as we can apprehend the argument, it is that the Joliet Steel Company diligently prosecuted its claim by attaching the debt due from the Chicago Company to the St. Louis Company; and that the Chicago Company was thereupon required to show its superior diligence by *paying* the Joliet Company's claim, and proceeding against *someone else* for the recovery of its indebtedness from the St. Louis Company. We confess that the argument strikes us as a delightful novelty, and it is not hard to understand why no authorities are cited in support of it. The Chicago Company occupied the double position towards the St. Louis Company of debtor and creditor. Under the doctrine of *Schuler* v. *Israel*, and the other cases cited in our former brief, only so much of the Chicago Company's debt could be collected as in right and justice ought to go from the Chicago Company to the St. Louis Company. The attaching creditor stands in the shoes of his debtor. It would seem difficult to fix any standard of diligence higher than that adopted by the Chicago Company, in holding on to what it had, and promptly filing the petition which is here before the court.

We respectfully insist, therefore, that the equity set up in the intervening petition must prevail, and that the petitioner should have judgment in this cause perpetually enjoining the enforcement of the Joliet judgment (now held by Ferguson as a purchaser *pendente lite*), and a money decree for

$11,916.88, being the difference between the amount of the Joliet judgment and the petitioner's actual damage, as shown by the evidence.

CHARLES S. HOLT,
E. PARMALEE PRENTICE,
Counsel for Appellant.

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JAMES H. McKE[illegible]
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

THE NORTH CHICAGO ROLLING MILL COMPANY, *Appellant*, vs. THE ST. LOUIS ORE AND STEEL COMPANY AND DAVID K. FERGUSON, *Appellees*.	Term No. [illegible]

ADDITIONAL BRIEF FOR APPELLEES.

HENRY [illegible],
Of Counsel for Appellees.

[illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE NORTH CHICAGO ROLLING MILL COMPANY,
Appellant,
vs.
THE ST. LOUIS ORE AND STEEL COMPANY AND DAVID K. FERGUSON,
Appellees.
} Term No. 197.

ADDITIONAL BRIEF FOR APPELLEES.

The following considerations are submitted on behalf of appellees, by way of reply to the argument for appellant, in addition to those stated in the brief heretofore filed for appellees.

IV.

Appellant's claim for unliquidated damages cannot be set-off against the judgment recovered by the Joliet Steel

Company against appellant as garnishee. Said claim is based upon alleged violations by the St. Louis Company of the rail contract of December 1, 1883, which occurred, if at all, after July 21, 1884, on which day appellant was summoned as garnishee. At that date no right of action for damages for breach of said rail contract existed in favor of appellant. No such claim or right of action arising after that date can be set-off by appellant against said judgment, the lien of which relates back to July 21, 1884, the date of said attachment, and is prior and superior to any supposed equity here alleged in favor of appellant.

We understand the contention for appellant to be (Appellant's brief, pp. 13, 18), that for the purposes of this controversy it is immaterial whether, at the time when appellant was summoned as garnishee, the St Louis Company had violated the rail contract, and consequently, whether at that date any such claim or right of action as here alleged had then arisen in favor of appellant: and that if, *when the intervening petition was filed*, a claim against the St. Louis Company for damages — then and still unascertained and unliquidated — had arisen in favor of appellant, for breach of said contract by said company after the admitted indebtedness of appellant to that company was attached by the Joliet Steel Company, appellant's equity to set-off such subsequently accruing claim for unliquidated damages against the judgment recovered by the Joliet Steel Company under said attachment, is superior in equity to the lien of the attachment and judgment thereon, and to any right acquired thereunder by the attaching creditor.

The doctrine of equitable set-off thus propounded may be stated as follows.

A sues B at law, for an admitted debt, and in aid thereof summons C as garnishee, in respect of an admitted indebt-

edness to B; trial had and judgment regularly obtained at law against B, principal debtor, and against C as garnishee. Afterwards, C brings his bill in equity to enjoin A from collecting said judgment, and for leave to set-off against it an unliquidated claim against B, for damages for breach of a contract between B and C wholly distinct from and independent of the indebtedness attached, which claim did not exist when C was summoned as garnishee and his indebtedness to A was subjected to the lien of the attachment. Under this state of facts, if it appear that when C's bill in equity was filed, B was insolvent, a court of equity ought to disregard any and all rights acquired by A in virtue of the attachment and judgment in pursuance thereof, and enjoin A from collecting his judgment against the garnishee — because, it is said, it would be against conscience and contrary to the principles of "natural justice," that the garnishee should not have the benefit, in a court of equity, of a set-off which the statute did not permit him to set up at law: and this, although A will thereby be deprived of the benefit and prior lien of his judgment at law, itself meritorious and otherwise unimpeachable, it also appearing that before C's suit in equity came on to be heard, B had settled all other liabilities, and was abundantly solvent and responsible at law for the damages claimed by C.

We submit that this goes very far beyond the doctrine of equitable set-off, as established by the authorities, including those cited in the brief for appellant.

It may be well here to recall the dates of the proceedings referred to.

The attachment suit was brought and appellant summoned as garnishee on July 21, 1884;[1] suit removed to

[1] Rec., p. 338.

United States court September 15, 1884;[1] garnishee's answer filed February 25, 1885;[2] trial, verdict and judgment against garnishee for $16,473.28 and stay of execution January 13, 1886.[3] On January 18, 1886, five days after said judgment rendered, appellant's intervening petition was filed.[4] In March, 1887,[5] all other claims against the St. Louis Company having been settled, the Missouri receivership was terminated and its property restored to said company. On May 16, 1887,[6] the principal (Olyphant) suit in Illinois was dismissed and the Illinois receiver was ordered to and did account to the St. Louis Company for the balance of cash ($2,713.26) and securities ($14,000) remaining in his hands,[7] said intervening petition being ordered to stand as an original bill for hearing without prejudice. This cause was heard on pleadings and proof, May 16, 1889,[8] and final decree entered November 18, 1889.[9]

Certain statements found on pp. 13–14 of appellant's brief in reference to the state of accounts between the St. Louis Company and the Chicago Company in July, 1884, are—no doubt inadvertently—incorrect and misleading. It is stated (p. 13), that even if there had been an agreement between them that *the ore and pig metal* received by the Chicago Company should be applied in satisfaction of the June rail account, the material delivered by the St. Louis company and unpaid for by the Chicago Company on July 10, 1884, fell short of the amount due for June rails by about $4,000; and that as 500 tons of the pig iron included in this estimate had been previously pledged to the Boatmen's Saving Bank of St. Louis for $7,500, *the total defi-*

[1] Rec., p. 157.
[2] Rec., p. 343.
[3] Rec., pp. 347–8.
[4] Rec., p. 150.
[5] Rec., p. 441.
[6] Rec., pp. 236–7.
[7] Rec., pp. 241, 245–6.
[8] Rec., pp. 460–61.
[9] Rec., p. 465.

ciency was therefore in excess of $11,000. On p. 14 it is again stated that —

"There was, therefore, a clear breach of the rail contract by the St. Louis Company on July 10th, and even if the material delivered by the St. Louis Company were applied in payment for the June rails, still there was an unpaid balance on July 10th of the difference between $21,536 and $17,550, or nearly $4,000, increased, as above shown, by $7,500, the amount of the lien held by the Boatmen's Savings Bank on 500 tons of the Iron."

If this had been so, there would have been nothing to contend about here: for the Chicago Company claimed and received, in the garnishment suit, full credit for the $21,536.56 due it for rails delivered in June, which was thus paid in full; being debited with the amount due from it to the St. Louis Company for ore and pig metal. In fact, the indebtedness of the Chicago Company to the St. Louis Company, for ore and pig metal in July, 1884, as stated both in appellant's answer as garnishee,[1] and in its intervening petition,[2] and as shown by the itemized bill or statement of account which it rendered to the St. Louis Company *under date of January 15, 1885*,[3] and which, aside from the $28,000 damages claimed as set-off, its own accountant testified was correct,[4] was $27,110.90 for ore, and $17,775.92 for pig metal or nearly $45,000 in all; against which it was credited with $21,536 56 for June rails, $6,322.21 for freight charges paid on ore and pig metal, and $458.66 rebate on quality of ore, — amounting in all to $28,317.43 debited to the St. Louis Company, and leaving a balance due from the Chicago Company to the St. Louis Company, *according to that*

[1] Rec., pp. 344–5. [2] Rec., pp. 154, 156, 158. [3] Rec., p. 262.
[4] Walden's test'y, Rec., pp. 259–60.

statement, of $16,599.39, after paying for the June rails in full. The correctness of this balance, excluding the claim for unliquidated damages, was not disputed at the trial of the garnishment suit,[1] and the judgment for $16,473.28 against the garnishee, was rendered accordingly. As against the Chicago company, no lien on any of said pig iron was ever asserted or enforced by the Boatmen's Bank, whose demands, with those of all other Missouri creditors, were finally settled at St. Louis, in March, 1887.

So far from being immaterial, the question whether, *at the date of the attachment, July 21, 1884*, appellant's claim for unliquidated damages for breach of the rail contract, was an existing right of action, lies at the very threshold of this controversy.

Whether, after that date, any such right of action accrued to the Chicago Company, is another question, which may be considered later. Our present contention is —

1. That on July 21, 1884, when appellant was summoned as garnishee of the St. Louis Company in the attachment suit brought by the Joliet Steel Company, a lien upon its then existing and admitted indebtedness to the St. Louis Company was created, which became complete and was merged in the judgment rendered against said garnishee in favor of the Joliet Steel Company on January 13, 1886:

2. That said judgment, when rendered, related back to the date of the attachment, the lien of which became consummate as of that date in favor of the Joliet Steel Company, not only as against the defendant in attachment, but as against all third persons not having valid prior claims to the fund attached:

[1] Rec. p. 381.

3. That, except in failing to pay, on July 10, 1884, for the rails delivered in June, the St. Louis Company had not, on or before July 21, 1884, in any respect failed to comply with its rail contract of December 1, 1883:

4. That if such non-payment on July 10, 1884, was a violation of said contract, appellant could recover no damages therefor except by way of interest at six per cent. per annum on the amount due and unpaid:[1] and that such interest, if recoverable at all, should have been claimed, and if claimed would have been allowed to the garnishee, in the garnishment suit, and not having been claimed therein, cannot now be claimed by way of equitable set-off against said judgment:

5. That, without conceding that any cause of action for damages for breach of said rail contract arose in favor of appellant and against the St. Louis Company after July 21, 1884, certainly no such cause of action existed in appellant's favor at that date, under the facts in proof:

6. That the judgment in favor of the Joliet Steel Company against appellant as garnishee, rendered on January 13, 1886, for an admitted debt arising from transactions wholly distinct from the rail contract, is a valid and meritorious claim, the right to enforce which, by execution against the garnishee, relates back to the date of the attachment and is prior and superior to any right of action or supposed equity subsequently arising, if any, as between the garnishee and the defendant in attachment:

7. That, even if a valid claim for unliquidated damages in favor of appellant against the St. Louis Company, for breach of the rail contract, were conceded to have arisen after July 21, 1884, under circumstances such that equity

[1] Rev. Stat. Illinois (Cothran's ed., 1887), p. 951, Ch. 74, Sec. 2, "Interest."

would permit appellant to set-off such claim against a judgment previously recovered against appellant *by the St. Louis Company for its own benefit*, — yet, under the facts above stated, equity will not allow such claim for damages to be set-off against this judgment, because the right of the Joliet Steel Company and its assignee to enforce said judgment was and is a prior and superior equity to any which, on the facts in proof, could arise in favor of appellant and against the St. Louis Company after said date.

If these propositions of fact and law are correct, then it is immaterial whether, after July 21, 1884, the St. Louis Company did or did not violate said rail contract, or whether, after said date, any right of action for breach of said contract arose in favor of appellant and against the St. Louis Company: and the decree below should, on these grounds alone, be affirmed. It is not conceded, however, that any such right of action ever accrued to appellant: though the argument for appellant seems to take it for granted.

It must be conceded that by the service of a writ of garnishment, an attaching creditor acquires, as against the garnishee, some inchoate legal right in respect of all property, effects and credits of the defendant in attachment, then held by or owing from the garnishee. The nature and extent of this right are thus defined in Drake on Attachment (7th ed.), Sec. 453:

"Garnishment is an effectual attachment of the effects of the defendant in the garnishee's hands, differing in no essential respect from attachment by levy, except that the plaintiff does not acquire a clear and full lien upon the specific property in the garnishee's possession, but only such a lien as gives him *the right to hold the garnishee personally liable for it or its value and to restrain the garnishee from paying his debt to the defendant.* The defendant's rights in the

property in the garnishee's hands are so far extinguished, as *to prevent the defendant's making any disposition of it which would interfere with its subjection to the payment of the plaintiff's demand, when that shall have been legally perfected.* * * * From the time of the garnishment, the effects in the garnishee's possession are considered as *in custodia legis*, and the garnishee is bound to keep them in safety, and, it was said by the Supreme Court of the United States, is not at liberty to change them, to convert them into money, or to exercise any act of ownership over them" (citing Brashear *v.* West, 7 Peters, 608; Mattingly *v.* Boyd, 20 Howard, 128).

In section 542, the same author says:

"Pending the garnishment, the rights of the defendant are excluded and extinguished, only to the extent that may be necessary for the ultimate subjection of the debt or property in the garnishee's hands to the operation of the attachment. For every purpose of making demand, of securing his claim by attachment or otherwise, the rights of the defendant remain unimpaired by the pendency of the garnishment. They subsist, however, *in subordination to any lien created by that proceeding.*"

Chapter XXXI of the same work discusses the garnishee's liability as affected by an equitable assignment of the debt. After stating the circumstances under which and the extent to which courts will protect the rights of parties to whom a debt due from a garnishee to the defendant had been equitably assigned before the garnishment, the chapter concludes thus:

"Section 615a. All the views expressed in this chapter will have been seen to refer to cases of the assignment of a debt before the garnishment of the debtor. *No assignment made after that event can have any effect to deprive the attachment plaintiff of his recourse against the garnishee.*"

Referring to attachments in general, the same author states (Section 224):

"When an attachment is served, a lien on the property attached is created, which nothing subsequent can destroy but the dissolution of the attachment." (citing numerous cases). "It is said to be beyond the power of a State legislature to pass an Act annulling it. And as to the defendant, though, as we have just seen, his power of alienation, subject to the attachment, is not impaired, yet no subsequent act of that description on his part can defeat the attachment." * * * (Section 224*a*). "And when, in a suit by attachment, the plaintiff obtains a judgment which, by the existing law, is a lien upon the property attached, the lien of the attachment becomes merged in that of the judgment, and the only effect thereafter of the attachment lien upon the property *is to preserve the priority thereby acquired, and this priority is maintained and enforced under the judgment.*"

It is true that the mere service of a writ of garnishment creates no lien upon specific property in the hands of the garnishee, such as is created by levying a writ of attachment upon property of the defendant. But, as above shown, it has the effect of restraining and preventing the garnishee, pending the attachment suit, from discharging his debt by payment to the defendant; and when a judgment is obtained by the attaching creditor in pursuance thereof, this right on his part is merged in such judgment, which he is then entitled to enforce like any other personal judgment against the property of the garnishee.

It is also true that the rights acquired or lien created by the service of a writ of attachment, whether by levy on specific goods, or summoning a garnishee, are measured by the rights of the defendant in attachment, at the time when it is made.

"It is a well settled principle that an attaching creditor

can acquire through his attachment no higher or better rights to the property or assets attached than the defendant had *when the attachment took place*, unless he can show some fraud or collusion by which his rights are impared." (Drake on Att., Sec. 223).

But it is equally true that a valid attachment, whether by levy or by garnishment, does secure to the attaching creditor, in respect of the property seized or garnishee summoned, a lien upon or prior claim to all property, effects or credits pertaining to the defendant in attachment *at that date*, and legally subjected to such process. Except by consent or default of the attaching creditor, no subsequent act, either of the defendant or of the garnishee, nor any subsequent change in the relations existing between them at the date of the attachment, can impair the rights thus acquired, either in a court of law or in a court of equity.

This is the logical and necessary conclusion from the principles above stated, — otherwise the supposed remedy given by the statute to an attaching creditor would amount to nothing: and it is the purpose of the statute to secure to him this prior lien, or claim, or right, in respect of the property, effects or credits of the defendant in attachment, just as much when a debt is garnished as when specific goods or chattels are seized under the writ. In the latter case, a lien on specific property, strictly speaking, is created. The garnishment of a debtor to the defendant does not, in the same strict sense of the word, create a lien upon specific property. But, as the above authorities show, it does create, in favor of the attaching creditor, a new and distinct legal right as against the defendant, on the one hand, and the garnishee on the other,— in virtue of which, provided the attachment proceedings are prosecuted to final judgment, any subsequent assignment of the debt by the defendant is inoperative, and any payment by

the garnishee, except into or by order of the court having jurisdiction, is wholly ineffectual to discharge his indebtedness.

As will presently appear, the settled construction which the Illinois Supreme Court has emphatically given to the attachment law of that State, goes further than this: but, for the moment, we are stating what we suppose to be the general doctrine.

Can it be contended that such a legal right, subsequently consummated by an unimpeachable judgment at law against the garnishee, will be disregarded by a court of equity? Concede that, *after* this right was acquired by the attaching creditor, events occurred giving rise, *as between the defendant in attachment and the garnishee*, to equities which, *as between them only*, a court of equity might enforce, — on what equitable ground can it be said that in order to give effect to these, a court of equity should nullify, by forbidding the enforcement of, the attaching creditor's prior right? Under such circumstances, what difference would there be, in principle, between permitting a garnishee to nullify the attaching creditor's judgment, by setting off a demand in his favor — not even a demand already existing, though not yet due, but a demand subsequently arising — against the defendant, and nullifying such judgment in favor of an assignee of the garnishee's debt, under an assignment made by the defendant after the attachment writ was served? In either case, and equally in both, the purpose and effect of the statutory remedy by attachment would be completely disregarded. That the latter would not be permitted is too clear for argument.

We find nothing in conflict with this view, in any of the cases cited for appellant. Neither of them involved or decided the question above presented.

Appellant's counsel quote (brief, p. 20) from the opinion of Mr. Justice Miller in *Schuler* v. *Israel*, 120 U. S. 510,

in support of the proposition that a garnishee may obtain relief in equity, by way of set-off, on the ground of the insolvency of the defendant in attachment. But the words quoted by them are immediately preceded, in the same paragraph, by the following:

"As we understand the law concerning the condition of a garnishee in attachment, he has the same rights in defending himself against that process *at the time of its service upon him* that he would have had against the debtor in the suit for whose property he is called upon to account."

We submit that the words above italicised plainly show that Mr. Justice Miller, in stating the law as to the rights of a garnishee in attachment, intended to and did distinctly limit the application of his remarks to demands exisiting in favor of the garnishee and against the defendant in attachment, at the time when the process was served. Otherwise we must impute to that eminent jurist the doctrine,—directly in conflict, we submit, not only with the authorities above cited, but with the statutory purpose and effect of such process,—that by means of transactions between the defendant and the garnishee, subsequent to the attachment, without the consent or control of the attaching creditor, the rights acquired by the latter under the statute may be not only impaired but destroyed.

No answer to this is found in a decision like that in *Hall v. Kimball*, 77 Ills. 161 (appellant's brief, p. 26). It is quite true that in that case a court of equity allowed Hall & Co. to set-off, against a demand sued on by Kimball & Co., on the ground that the latter firm was insolvent, a note on which Kimball & Co., were endorsers, and which was purchased by Hall & Co., after the suit against them was commenced. *But that case involved no question of any prior right or claim of an attaching creditor* or any other

third person. In effect, the question was whether McHatten's note, endorsed by Kimball & Co., which Hall & Co. had bought, and sought to set-off against their own note, sued on by Kimball & Co., was a valid demand, McHatten being a partner in Hall & Co.,— and if it was, since Hall & Co. could not sue McHatten at law on the note, whether they could proceed against the endorsers in equity and have it set-off on the ground of insolvency. It was held that they could; but no point decided in that case has the least relevancy to the question we are now considering.

So in *Chicago, etc., R. Co.* v. *Field*, 86 Ills. 270, no question of an attaching creditor's rights was involved. The original debtor and creditor were the only parties to the controversy. The question was simply whether the complainants, against whom the railroad company had recovered a judgment, could obtain relief in equity by restraining its collection pending the establishment by them of previously existing demands against the railroad company for a much larger amount, which might have been but were not litigated when that judgment was obtained, and which, the railroad company having subsequently become insolvent, they could not otherwise collect.

The same is true of the other Illinois cases cited for appellant to show that equity will allow a set-off on the ground of insolvency. In neither one of them was it held or remotely implied that such relief would under any circumstances be granted in derogation of the rights of an attaching creditor. Any such ruling would have been in direct conflict with the construction emphatically placed by the Supreme Court of Illinois upon the attachment act of that state in the following cases.

In *Reeve* v. *Smith*, 113 Ills. 47, 51, a question arose as to the apportionment between attaching creditors of funds attached in the hands of a garnishee. After quoting Section 37 of the Attachment Act, which provides that all judg-

ments in attachment against the same defendant, returnable at the same term, "shall share *pro rata* according to the amount of the several judgments in the proceeds of the property attached, either in the hands of a garnishee or otherwise," — the court says (p. 51):

"It will be perceived that *property attached, and funds in the hands of a garnishee, are placed on the same footing*, — that is, when attached, such property or funds *are appropriated from that time, by law, to the payment of a certain class of creditors.* Who constitute the class of creditors whose rights are protected by law? They are specifically enumerated in Section 37, and consist of the creditors of the attachment debtor who shall obtain judgments against such debtor within the time and in the manner specified in that section of the statute. It is the whole property or funds attached, and not any specific part or portion, that is held, until it shall be ascertained who or what creditors are entitled to share in the distribution to be made. Creditors who do not choose to put their claims in judgment, by attachment or otherwise, within the time limited by the statute, are not permitted to share in the proceeds of the property or funds attached,— certainly not until all attachment or judgment creditors have been paid."

In *Bank etc.* v *Indiana Banking Co.*, 114 Ills. 487, 489, this decision was expressly affirmed, the court saying (p. 489): —

"But the practice in such cases has been so long settled it does not admit of further discussion. The principles of the former decisions have been recently restated by this court in the case of *Reeve* v. *Smith*, 113 Ills. 47, where it was said, in construing the 37th section of the attachment act (Rev. Stat. 1874), that property, real and personal, attached, *and funds in the hands of the garnishee, are placed on the same footing*,— that is, when attached, such property or funds are appropriated from that time to the payment of a certain class of judgment creditors specifically enumerated."

We submit that the construction thus placed by the Supreme Court of Illinois upon the statute of that State, under and pursuant to which the Joliet Steel Company, on July 21, 1884, attached in the hands of the Chicago Company all debts it might owe to the St. Louis Company, afterwards perfecting its claim by the judgment recovered in the manner and within the time prescribed by the statute, conclusively establishes, for the purposes of this controversy, the propositions above stated. From the moment of serving that writ of garnishment, the indebtedness of the Chicago Company to the St. Louis Company — admitted in its answer as garnishee, and the existence of which at the date of the garnishment is conclusively established by the judgment afterwards rendered — was a fund "*appropriated, by law*, to the payment of a certain class of creditors," — namely, those creditors of the St. Louis Company, and no others, who should bring suit by attachment against that company returnable to that term of the superior court of Cook County, in which court the attachment suit was originally brought, and afterwards removed to the United States Circuit Court. But this excluded from any right to or benefit of that fund *any and all creditors of the St. Louis Company, then existing*, who should not see fit to avail themselves of that statute by complying with its conditions; and conferred upon creditors who did comply with those conditions an absolute right, at law, to the appropriation and application of that fund to the payment of their demands. That is the precise point decided and emphasized in the two cases above cited.

In the face of these decisions, will it be contended that even if an Illinois creditor of the St. Louis Company, who held on July 21, 1884, a valid and matured demand against that company, for which he might have brought an attachment suit returnable to that term of court, but failed to do so, had afterwards — no

matter on what alleged or supposed equitable grounds — sought in a court of equity to share in the fund so appropriated to its diligent creditors, such a prayer would have received a moment's consideration? Would not the answer of a court of equity to such an application necessarily be, that no ground could possibly exist upon which it could assume to deprive any creditor who had complied with the conditions of the attachment act, of any right he had thus acquired, or any part of his *pro rata* share of the fund thus *appropriated by law to the payment of his demand when perfected into judgment?*

But appellant's position is even worse than this. It asks a court of equity not only to deprive the Joliet Steel Company, or its assignee, of the benefits and rights which that company acquired in virtue of the express provisions of the Illinois statute,— not only against the St. Louis Company, but against this appellant as garnishee,— but to apply the fund thus withdrawn from its lawful owner to the payment of a demand set up by said garnishee, against the St. Louis Company, for uncertain and unliquidated damages for alleged breach of a wholly distinct and independent contract, which breach did not occur, nor said demand exist as a cause of action, until after the Joliet Company's rights under the statute had accrued, and the funds in the hands of the garnishee had been appropriated and set apart, by law, for the satisfaction of those rights.

This aspect of the controversy seems to have been overlooked, not to say ignored, by the learned counsel for appellant: but we submit that unless the questions above stated are determined in appellant's favor, the controversy is at an end.

We do not understand it to be seriously contended for appellant that on or before July 21, 1884, any violation of the rail contract occurred on the part of the St. Louis

Company out of which there did or could arise a cause of action against it, in favor of the Chicago Company, for damages for breach of said contract. Not conceding that any such cause of action arose after that date, we submit that it is perfectly clear, on the proof, that on that day, when the writ of garnishment was served on appellant, no such cause of action existed.

Even if on or before July 21, 1884, the St. Louis Company had violated the contract by refusing to accept rails tendered in accordance therewith, and it were conceded that appellant might have brought its action for damages for such refusal, that would not justify a court of equity in permitting it to set-off such claim for unliquidated damages against the judgment recovered by the Joliet Steel Company, — in other words, to deprive the plaintiff in attachment of his share of the fund "appropriated, by law," to the payment of his judgment when recovered. As above shown, that fund was appropriated, by the service of the writ, for the benefit of those creditors only who should bring attachment suits to that term of court and perfect them by judgment. This, appellant confessedly did not do.

But aside from this, the proof is clear that up to July 21, 1884, no breach of the rail contract had been committed by the St. Louis company in respect of which a cause of action for damages such as here claimed could or did arise against it in behalf of appellant.

The failure of that company to pay on July 10, 1884, for the rails delivered in June, was no such cause of action. The amount due on that day was a demand liquidated by the terms of the contract,—an actual *debt*, for non-payment of which when due no damages other than interest could be recovered. But, as above shown, that debt was allowed to the appellant by the judgment in the garnishment suit, besides its further claim for freight charges paid, amounting to some $6,700, all which was applied to

the extinguishment *pro tanto* of its admitted indebtedness for ore and pig metal. That judgment, it will be remembered, was rendered on January, 13, 1886,[1] *five days before this intervening petition was filed.* If the claim made in the intervening petition,[2] that by said default in payment on July 10, 1884, appellant "was *damaged* to the extent of about one hundred dollars, a little more or less," represents *interest* on the amount due and unpaid on July 10th, it furnishes no ground for the relief sought here. Not having been claimed in the garnishment suit, it is barred by that judgment. If it was inserted as a claim for *damages*, properly speaking, accruing before July 21, 1884, on some theory that a claim for damages alleged to have accrued after that date might in that way be connected with it, and and the whole treated as *a continuous claim for damages* beginning before July 21st,—that also, we submit, does not require discussion.

That part of the argument for appellant (brief, pp. 13–14) relating to the question whether the St. Louis company did violate its contract before the date of the attachment, is based upon a mistake as to the facts proved. The sole ground, apparently, upon which it is asserted that there was a breach before that date, is the statement—above shown (*supra* pp. 4–6) to be erroneous,—that the value of the ore and pig metal delivered by the St. Louis Company and unpaid for by the Chicago Company on July 10, 1884, fell short by several thousand dollars of the amount payable for the June deliveries of rails. Nothing more, we think, need be said as to this.

The remainder of the argument for appellant (brief, pp. 14–15) on the question, whether appellant had "a good claim for damages against the St. Louis Company for breach of the rail contract," also proceeds, we sub-

[1] Rec., p. 347. [2] Rec., p. 156.

mit, upon assumptions which the proof shows to be erroneous.

The rail contract[1] provided (clause 2) for the delivery during 1884 of 18,000 tons of rails in all, free on board cars at appellant's works in Chicago, "in about equal amounts each month" during the year. It did not require delivery of any specified amount on any specified day in any month, and the correspondence in proof shows that both parties treated the amount of each month's deliveries as a matter to be agreed on from time to time as convenient.[2] Clause 8 provided for monthly settlements "in accordance with the weights of said first party at their works," by payment in cash on the tenth of each month for all rails delivered during the previous month. Clause 11[3] provided that the St. Louis Company should furnish cars on which to load the rails, and that —

"— in the absence of the furnishing of cars upon which to load said rails, enabling the said first party to make their deliveries as herein specified, then the said second party shall make their settlements and pay for said rails on the tenth day of the month, the same as though said rails had been delivered; and the *non-delivery of cars* shall in no way relieve the said second party from the prompt payment *for the rails* on the tenth day of the month, as specified herein."

Obviously, since the monthly settlements were to be based on manufacturer's weights, the amount due on the tenth day of any month could only be determined by the weights of rails manufactured and ready for delivery during the preceding month, and either delivered as agreed for, or the delivery of which was prevented by the default of the St. Louis Company in furnishing cars. It certainly

[1] Rec., p. 151.
[2] See Rec., pp. 285–6, 292–3, 295–7, 301, 305.
[3] Rec., p. 152.

did not entitle the Chicago Company to payment on the tenth of any month for rails neither delivered nor ready for delivery during the month preceding.

Mr. Potter testified [1] that no rails were made by the Chicago Company that were not delivered to the St. Louis Company; and it does not appear that any rails were delivered or tendered for delivery, or manufactured by the Chicago Company, during July. No amount was therefore payable by the St. Louis Company on August 10th. Bu even had the Chicago Company made and tendered for delivery at its works during July 1,500 tons of rails, which was all that the contract entitled it to deliver in any one month, and had the St. Louis Company failed to furnish cars for such delivery, still the St. Louis Company would not be in default if it paid for those rails, whether delivered or not, on August 10th. In other words, there could be no breach of the contract for July deliveries unless default was made not only in furnishing cars to receive them in July, but in paying for them on August 10th.

In any view of the contract, therefore, since no question of payment for rails delivered in June enters into the present controversy, there was not and could not be any breach of the contract by the St. Louis Company before August 10, 1884, twenty days after the date of the attachment. Meanwhile, the statutory rights of an attaching creditor had been acquired by the Joliet Steel Company, as against the Chicago Company, garnishee, subsequently perfected under the statute by its judgment regularly recovered, and which related back to July 21, 1884.

It follows, we submit, from the considerations above presented, not only that appellant is not entitled to the relief here sought against the Joliet Steel Company or its assignee, but that the question whether, after July 21, 1884,

[1] Rec., p. 354.

any right of action for damages on the rail contract accrued to the Chicago Company against the St. Louis Company, is wholly immaterial.

Whether, *after July 21, 1884*, when appellant was summoned as garnishee, a right of action accrued to it, against the St. Louis Company, for damages for breach of the rail contract, is a question which we do not deem it necessary to discuss at length, — certainly not, if the view of the law applicable to this case, above presented, be correct. But the argument for appellant on this head (brief, pp. 14–15), though very brief, seems to us untenable, on grounds which may be briefly mentioned.

Clause 11 of the rail contract is apparently construed to require the St. Louis Company to make settlement in cash on the tenth of each month for rails due the preceding month, whether such rails were manufactured or not. If so intended, we submit that this construction is erroneous. As above shown, the St. Louis Company was bound to furnish cars at appellant's works and *its failure to furnish them* was not to relieve it from the duty of payment on the tenth of the following month,— but, payment for what? For rails neither delivered, nor tendered for delivery, nor even manufactured? But since the amount due at any settlement was to be determined by the weights of rails manufactured, how could such amount be determined if there were no rails on hand to weigh? Our construction of the 11th clause, and inferences therefrom, have been stated above.

Again, it is contended that the St. Louis Company failed to give instructions as to the weight and form of rails required in July, until July 25th, and then telegraphed for 200 tons, to be paid for otherwise than as provided in the contract, which order appellant declined to accept. The

telegram of July 25, 1884, here referred to,[1] does not bear out this statement. The receiver did suggest paying for these rails in ore, but expressly promised to pay any balance "according to contract."

The argument for appellant on this head seems to be summed up in the following sentence (brief, p. 15):—

"There was no express *refusal* on the part of the St. Louis Company to carry out the contract, but there was constant and eventually complete *failure* to carry it out, doubtless on account of the insolvent condition of the company."

This is not a sufficient statement of a cause of action for damages for breach of a contract such as here in question.

This was an executory contract for the manufacture, sale and delivery of goods from time to time at a stipulated price. In such case, we understand the general rule to be that the seller, in order to recover damages for breach of contract, must show either that the buyer expressly refused to accept the goods when tendered in pursuance of the contract, or prevented the seller from performing it.

2 Benjamin on Sales (4th Am. ed., 1884), Sections 899–909, and cases cited;
Id., Secs. 1117–1124 and cas. cit.;
Hosmer *v.* Wilson, 7 Mich 304;
Collins *v.* Delaporte, 115 Mass. 159.

The buyer's insolvency does not *per se* put an end to the contract, *a fortiori*, if after notice of insolvency the seller treats it as still existing.

2 Benjamin on Sales, Sec. 1119.

[1] Rec., p. 305.

Where the goods were to be made and delivered at successive periods, and each delivery paid for accordingly, there being no abandonment or rescission of the contract, it is incumbent on the seller to show that he was ready and offered to deliver the goods in accordance therewith, and that such offer was refused, or that there was a complete inability on the part of the buyer to perform the contract.

2 Benj. on Sales, Secs. 899–909.

The correspondence which took place between the Chicago Company and the receiver after July 21, 1884,[1] shows, we submit, that the action of the Chicago Company, after the receiver was appointed in Missouri, was not such as to entitle it to treat this contract either as rescinded or abandoned or violated. It appears that the Missouri receiver within a very short time after his appointment, was directed by the court which appointed him to carry out this rail contract, as one of value to the company, and he so informed the Chicago Company; also informing them that he could not promise to pay cash for rails delivered, but was authorized to and would issue receiver's certificates for that purpose.[2] It is true that the Chicago company declined to receive such certificates, but they continued to correspond with the receiver in reference to making and delivering rails, and as late as October were negotiating with him for further deliveries at a reduced price.[3]

Even were it conceded that under the circumstances in proof the Chicago company was entitled, in August, 1884, or later, to rescind the contract by notice duly given to the St. Louis company, and to claim damages for their failure

[1] Rec., pp. 305-326. [2] Rec., pp. 318–20.
[3] Rec. pp. 325, 359.

to accept and pay for rails as therein provided for, it does not appear that any such notice was given or any such position taken by it, nor that it treated the contract as at an end. It was not, therefore, in a position to bring suit for damages for breach of the contract. Mr. Potter's testimony on cross-examination [1] was to the effect that after he had reason to suppose that the contract would not be carried out by the receiver, he not only took no steps towards rescinding it, but made no effort to work up or otherwise to dispose to the best advantage of the material he had on hand, for the depreciation in value of which damages are now claimed.

2 Benjamin on Sales, Sec. 860, and cas. cit.
1 Sedgwick on Damages (8th ed.) § § 201–2.
Smoot *v.* United States, 15 Wall. 36, 48.
2 Smith's Leading Cases, pp. 45, 51.

The contract not having been rescinded, it was the duty of the vendor to offer to fulfil it at the time and in the manner stipulated; and on failure of the buyer to accept the goods, the proper rule of damages is the difference between the contract price and the market price of the goods at the time when the contract was broken.

2 Benjamin on Sales, Sec. 1117;
2 Sedgwick on Damages (8th ed.), Sec. 753.

The damages claimed by appellant were not computed or proved in accordance with this rule, nor was any proof offered by appellant from which the damages claimed by it can be computed in accordance therewith. If entitled to recover any damages for breach of this contract, it was for appellant to show what was the market price of such rails at the time when each successive monthly delivery

[1] Rec. p. 358.

should have been made, as compared with the contract price. Such proof was not offered, but only general statements[1] to the effect that the rail market during 1884 was a declining market, and that in January, 1885, appellant sold rails at a depreciation of $5.50 per ton, in the manufacture of which it had used materials previously purchased by it, and which it could have used in making rails under this contract. The proof offered for appellant, and from which the damages here claimed were computed, was not based upon a comparison of the contract price and the market price of rails at the time of alleged breaches of contract. It was based upon the difference between the price previously paid for materials which it could have used in manufacturing rails under this contract, at $35 a ton, and the estimated value of those materials when used in the manufacture of rails sold at $29.50 per ton (Rec. pp. 256–57. This testimony was objected to as immaterial and irrelevant, and furnishes no proper basis upon which, if it were held that appellant was entitled to recover damages for breach of said contract, such damages could be computed.

On the whole case, it is respectfully insisted for appellees that the decree below, dismissing the bill, should be affirmed.

HENRY HITCHCOCK,
Of Counsel for Appellees.

[1] Rec., pp. 255–6.

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JAMES H. McKEN

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No. 197.

THE NORTH CHICAGO ROLLING MILL COMPANY,
APPELLANT,

against

THE ST. LOUIS ORE AND STEEL COMPANY,
APPELLEE.

Reply of Appellant to Additional Brief Submitted in Behalf of Appellee.

CHARLES S. HOLT,
E. PARMALEE PRENTICE,
Of Counsel for Appellant.

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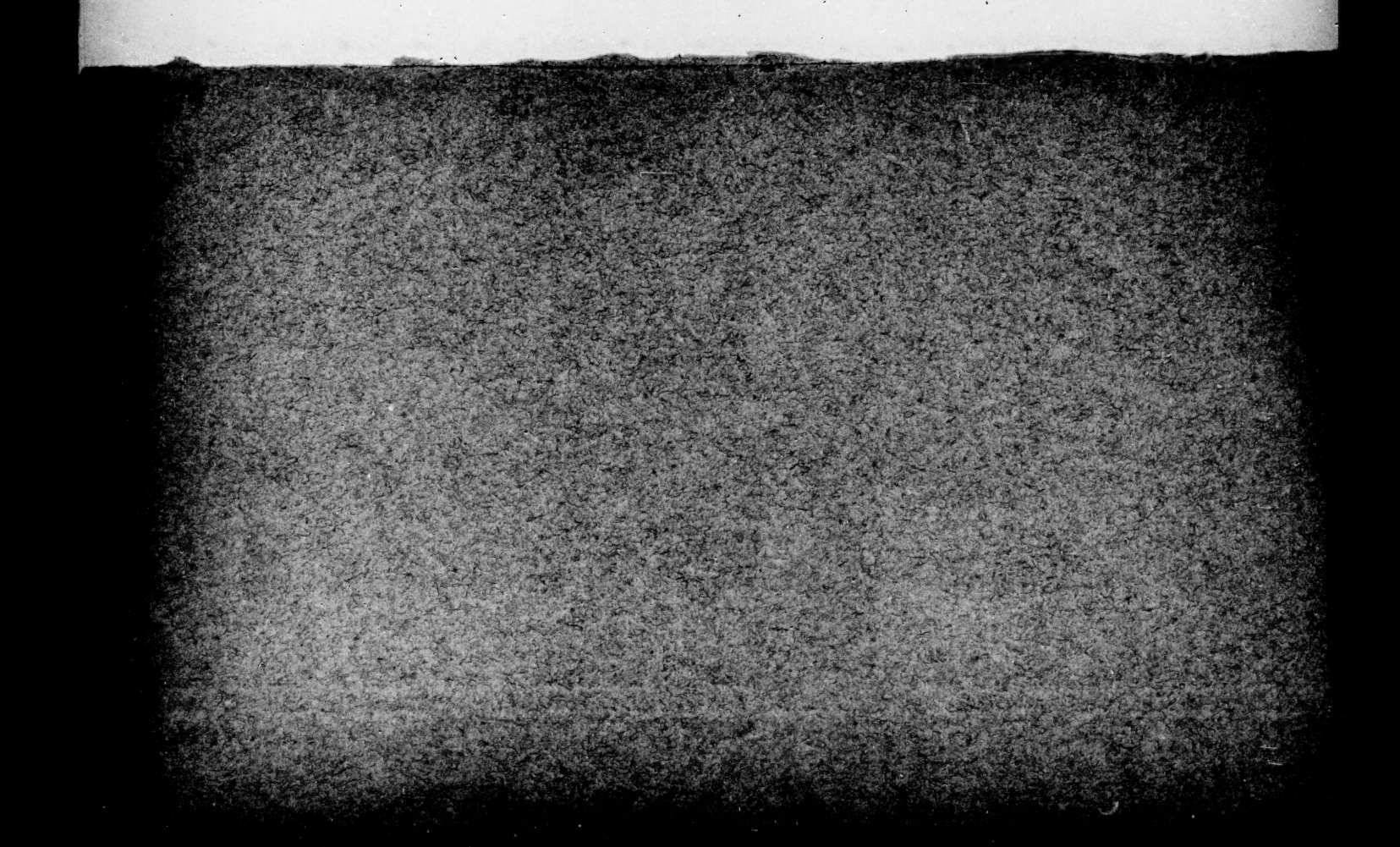

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Since this case has been upon the call and within very few days before the hearing, long after the briefs of appellant and of appellee had been filed, and long after counsel for appellant had filed their reply to the argument of appellee, we have been taken by surprise by finding upon the files of the case a new and additional argument, twenty-six pages in length, submitted on behalf of appellee.

Inasmuch as in this last argument entirely new questions are raised and urged with great earnestness, it is, perhaps, not unfair to assume that, although counsel for appellee professes to rely upon his former argument as well as upon

the grounds which he now presents for affirmance of the judgment from which we appeal, nevertheless by the submission of this brief at this time he practically concedes an abandonment of his former position.

Upon an examination of this additional argument it will be found that although counsel subdivides the proposition advanced in this argument into some seven different subdivisions, nevertheless the main points of his brief are two:

1. That the judgment at law against the Chicago Company, when rendered, related back to the date of the attachment, the lien of which became consummate as of that date in favor of the Joliet Steel Company, not only as against the defendant in attachment but as against all third persons not having valid prior claims to the fund attached, and that if a valid claim for damages in favor of appellant against the St. Louis Company for breach of the rail contract were conceded to have arisen after the service of the garnishment writ, under such circumstances that equity would permit appellant to set off such claim against a judgment previously recovered against appellant by the St. Louis Company *for its own benefit;* yet when the action is brought by an attaching creditor, the judgment, when rendered, will so relate back to the time of the service of the writ that equity will not permit, as against such creditor, the equitable relief which would have been allowed as against the St. Louis Company.

In order to gain the advantage sought by this argument it becomes necessary for counsel for appellee also to establish the second proposition, which is urged in his additional brief, as follows:

2. That no cause of action existed in favor of appellant at the date of the service of the garnishment process under the facts in proof.

These propositions we propose to deal with in the order named, and we shall hope to make it appear to the Court that an attaching creditor, under the laws of Illinois, stands precisely in the shoes of the defendant in attachment, and as

against the garnishee has no greater rights than belong to the attachment defendant: and we shall hope also to make it appear that at the date of the service of the garnishment writ upon the Chicago Company that company had a valid and subsisting cause of action against the St. Louis Company for the damage suffered by reason of its breach in performance of the rail contract, or that in any event appellant's cause of action accrued before the maturity of the indebtedness garnished.

If we succeed in establishing *either* of these propositions the argument of appellee must fail.

I.

An Attaching Creditor, under the Laws of Illinois, Stands Precisely in the Shoes of the Defendant in Attachment and, as against the Garnishee, has no Greater Rights than Belong to the Attachment Defendant.

The claim of appellee in regard to this matter is that by service of a writ of garnishment the attaching creditor acquires, as against the garnishee, an inchoate legal right in respect to all property, effects, and credits of the defendant in attachment then held by or owing from the garnishee, and in support of this proposition reference is made to Drake on Attachments, in which it is stated that from the time of the garnishment the effects in the garnishee's possession are considered *in custodia legis*, and the garnishee is bound to keep them in safety and is not at liberty to change them and convert them into money or to exercise any act of ownership over them (Additional Brief of Appellee, pp. 8, 9). It is conceded on behalf of appellee that some set-offs may be allowed in favor of the garnishee, but it is insisted (quoting a phrase from the opinion of Mr. Justice Miller in Schuler *vs.* Israel, 120 U. S., 510) that the garnishee

has the same rights in defending himself against garnishment process *at the time of its service upon him* that he would have had against the debtor in the suit for whose property he is called upon to account. (Additional Brief of Appellee, pp. 12, 13.)

In support of this argument counsel cited also the statement from Drake that no *assignment* made after the service of process can have any effect to deprive the attachment plaintiff of his recourse against the garnishee. (Additional Brief, p. 9.)

Reference is also made to the practice in garnishment cases in Illinois, by which, upon the institution of any attachment or garnishment suit, the property becomes impounded for the benefit of two classes of creditors, viz., those who bring similar attachment or garnishment suits against same defendant, returnable to the same term of court, and those who procure judgment against the defendant at the same term in which judgment shall be rendered in the first attachment suit.

We have no quarrel with the statement of the law thus made by appellee, if it be confined to those cases to which it is limited by the decisions and practice of this Court and of the courts of Illinois.

What that practice is may be understood by reference to the nature of garnishment proceedings.

The garnishee in every case is an involuntary party to a suit in which he has no personal interest. He is sued by one to whom he owes nothing, to whom he is under no obligation whatever. He is brought into court by one who is not his creditor, but who is a stranger to the contract under which the garnishee became indebted, and the letter of that contract is disregarded by the judgment which diverts the payment. The new relations of parties, whatever they may be, are relations established by the law which steps in between the contracting parties, imposing new duties and obligations, which are often very onerous and always more or

less expensive to the garnishee. Such a law finds its justification only in its rightful purpose. It is a proceeding which is necessarily in some sense equitable in its nature and is so considered in Illinois. Its analogy may be found in the equitable doctrine of subrogation. The present proceeding, it will be remembered, is, in fact, upon the chancery side of the court, so that the analogy to the principles of subrogation are almost entirely complete. Suppose that under the practice in Illinois this case had assumed the form as well as the substance of a bill for subrogation, is it likely that in that case counsel for appellee would have urged, as he does here, the application of technical legal principles?

Is it likely that in such a suit we would have heard the claim on the part of the St. Louis Company that a decree of subrogation when rendered will relate back in time not only as against the defendant but *even as against all third persons* so as to cut off intervening equitable rights, and leave unimpaired only such legal liens as had been established before the filing of the bill? The answer of a court of equity to such a claim as this is given in no uncertain sound.

The equitable doctrine of relation, so far as we are aware, is never allowed so as to prejudice intervening equities in favor of third persons.

"In the civil law, the definitions of which have in the "main been followed by our courts, subrogation has been "defined as that change by which another person is put "into the place of a creditor." * * * "The party who is "subrogated is regarded as entitled to the same rights and "indeed as *constituting one and the same person* with the "creditor whom he succeeds," and the remedy which is given to him "is not allowed where it would work any in-"justice to the rights of others."

Sheldon on Subrogation, secs. 1, 2.

The same principles, we believe, should control the present action.

Under circumstances such as surround a garnishee, where the only peril which can arise against him is a peril imposed upon him by the law and not assumed by any act of his own, it is only just and proper that the law by which this peril might arise should also bring with it to the garnishee such necessary protection as will secure him from any loss by reason of this proceeding, and this we believe is the prevailing doctrine with the courts.

"It is the rule that the garnishee shall not by operation "of the proceedings against him be placed in any worse "condition than he would have been in had the defendant's "claim been enforced against him by the defendant."

Henry *vs.* Wilson, 51 N. W. Rep., 1157.
Huntingdon *vs.* Risdon, 43 Ia., 518.

The statement made by appellee as to the practice in garnishment cases in Illinois is true so far as it goes. It is subject, however, of course to considerable limitation in favor of the garnishee, for as is necessarily true from the statement of the case the garnishee cannot become a member of either of the two classes of creditors for whom the garnished fund is impounded, since he cannot institute attachment proceedings against himself. In order to prevent any miscarriage of justice in this way, however, it is, so far as we are informed, the unvarying rule in that State to allow to the garnishee all proper items of set-off which he has against the defendant in attachment before attaching creditors receive anything whatever, and it is only the sum left in the hands of the garnishee *after* such set-off has been allowed that can be considered as in any sense impounded for the benefit of creditors.

It only remains, then, to consider what classes of set-off should be allowed in favor of the garnishee and as against whom these items may be allowed.

In this connection we may assume that it has been demonstrated in our former argument that the set-off claimed

by appellant should unquestionably be allowed in an equitable proceeding brought to restrain the collection of any judgment rendered for the benefit of the St. Louis Company. It may be fair also to assume that this proposition is admitted by counsel for appellee, since he finds it necessary to distinguish between such a suit and the suit which was brought in this case in part at least for the benefit of the Joliet Steel Company. Indeed, the issues made by the pleadings are based upon this distinction which appellee seeks to make, for the answer of the Joliet Steel Company filed in the court below expressly recites that the judgment in favor of the St. Louis Company was for its use, and alleges that appellant "cannot set off in this proceeding any dam-"ages accruing subsequent to the institution of said suits "*as against this respondent.*" (Record, p. 224.)

We shall hope to show that under the practice in Illinois if the set-off would have been permitted in equity as against the St. Louis Company, it would also be permitted in a garnishment proceeding instituted by the Joliet Steel Company, for the reason that an attaching creditor in asserting a claim against a garnishee stands in the shoes of the defendant in attachment.

The purpose of proceedings in attachment is in no way to affect the rights of the garnishee, but merely to enable the attaching creditor to collect a debt which would otherwise be paid to his debtor.

Under the practice in garnishment the suit against the garnishee is brought in the name of the defendant in attachment and the judgment is one judgment rendered in favor of the principal defendant. If the contention of counsel for appellee were accepted in this case no such practice as this would be possible, for the principles which would control the trial of the case so far as concern the rights of the attaching creditor would not be the same principles which would control the case so far as concerned the rights of the principal defendant. If it be true, as counsel claim, that

some items of set-off might be allowed in litigation wholly between the principal defendant and the garnishee which could not be allowed in favor of the garnishee *as against the attaching creditor*, it would necessarily be true in all cases where questions such as these would arise that *one judgment could not express the whole conclusion of the court.* Upon this very matter of practice the supreme court of Illinois has passed in a case decided as recently as January 18, 1892, in which it was claimed that judgment should be rendered against the garnishee in favor of the attaching creditor only for so much as would be sufficient to pay that creditor's demands. In overruling this objection the court called attention to the fact that this claim had already been disposed of in cases of attachment, and then said that "there can be no distinction in principle in this respect between proceedings on judgment and proceedings by attachment, for *that which gives jurisdiction to proceed by attachment in nowise affects the relation between the garnishee and the attachment debtor*, and so we applied the rule in Webster *vs.* Steele, 75 Ills., 544."

Kern *vs.* Brewing Association, 29 N. E. Rep., 1035.

This principle receives additional emphasis from the fact that under Illinois practice if the set-off allowed to the garnishee shall exceed the sum found to be owing by him to the defendant in attachment the garnishee is entitled, where, as in the case at bar there has been personal service upon the principal defendant, to a judgment against him for the amount of such excess. After judgment in garnishment proceedings the doctrines of *res adjudicata* apply as between the garnishee and the principal defendant.

As we understand the decisions in Illinois the doctrine above referred to is supported, without exception, by every Illinois case upon the subject.

In Richardson *vs.* Lester, 83 Ills., 55, an effort was made by an attaching creditor to claim the benefit of an equitable estoppel, such as could not have been claimed by the de-

fendant in attachment. In passing upon this question the court says:

"We are not aware that the execution creditors can assert "any right as to the property or proceeds that Robinson could "not. Indeed, the action is in the name of Richardson and "Robinson, and if they could not recover against the defend- "ants, *it follows as a matter of course the garnisheeing creditors* "*cannot*, for if they recover at all it must be in the name of "the execution debtors."

In Peck *vs.* The Coal Company, 3 Ills. App., 619, a similar question arose in an effort by a creditor of the corporation to enforce a statutory stockholders' liability. It was shown that the stock in question had nominally been paid for by the conveyance of property to the corporation, and that the corporation had accepted such conveyance in full payment for the stock. The court says:

"It is quite evident that if the company was to bring an "action against appellant upon his subscription to the capital "stock the conveyance of the land could be pleaded as full "payment therefor, and from the proofs in this record we fail "to see how a recovery could in such case be sustained in favor "of the company. We are aware that the rule in equity in "this country is to treat the capital stock as a trust fund for "the payment of debts owing by the corporation, and have "no desire to limit the operation of so beneficial and just a "rule, but if the party pursues a legal remedy in the name of "the corporation for his use, under which proceeding *the lia-* "*bility of the garnishee to the company is the measure of his* "*liability to the creditor*, he can have no relief *unless he can* "*show that the garnishee is indebted to the nominal plaintiff.*"

In Haines *vs.* O'Connor, 5 Ills. App., 213, the question raised involved the jurisdiction of the county court of Cook county, which in ordinary cases of assumpsit is limited to those suits in which the amount involved does not exceed one thousand dollars. In discussing this subject the court held that in cases of garnishment the test of jurisdiction was not to be found in the amount of the judgment against the

attachment defendant, but in the amount of the judgment suit against the garnishee. The syllabus is as follows:

"The defendant in the attachment is in contemplation of the law the plaintiff in the garnishment proceedings," and the matters between him and the garnishee constitute the case.

Upon this ground it is held that the jurisdiction was determined by the amount so involved. The court says:

"Although the defendant in the attachment, the alleged "debtor does not institute the proceedings, and the statute "authorizes it to be done by the creditor, yet the law regards "it as the case of the defendant in the attachment against "the garnishee, in which *the latter has the same rights of de-* "*fense* and is entitled to the same mode of trial *as if the de-* "*fendant in the attachment had brought the suit directly in his* "*own name against the person in this proceeding called the gar-* "*nishee.* THE ATTACHING CREDITOR IS NOT A PARTY TO THE "ISSUE.

"In Warne *vs.* Kendall, 78 Ills., 598, the supreme court "expressly decided that in a case like the one under con- "sideration it was irregular to make up the issue and try it "as between the garnishee and the attachment creditor, but "that the issue must be made up between the defendant in "the attachment and the garnishee. Wherefor the judgment "cannot be rendered in favor of the attaching creditor, but "must be in favor of the defendant in the attachment against "the garnishee, and then it will stand as a security or fund "in which other attaching creditors may participate. Far- "rell *vs.* Pearson, 26 Ills., 463; Rankin *vs.* Simonds, 27 "Ills., 252.

"The garnishee is not properly a defendant in an attach- "ment suit to defend against the claim of an attaching cred- "itor. Carriker *vs.* Anderson, 27 Ills., 358.

"In Towner *vs.* George, 53 Ills., 168, the court, by Chief "Justice Breese, said:

"'It may be proper to say that we are surprised that not- "'withstanding the admonitions of this court and instruc- "'tions given as to the form of the judgment against gar- "'nishees circuit courts will persist in entering them in an "'improper form—that is, being in the name of the plaintiff

"'in a judgment against garnishee instead of in the name of "'the debtor in attachment as the plaintiff and against his "'or her debtors as the defendants.'

"These citations are made to show that the defendant in "attachment is in legal contemplation the plaintiff and the "matters between him and the garnishee constitute the "case."

To hold otherwise, the court says, would give rise to multiplicity of actions.

This latter comment of the court, it may be observed in passing, would apply with equal force to the case at bar, if the contention of counsel for the St. Louis Company should be sustained, for as soon as the rights of the attaching creditor and of the defendant in attachment as against the garnishee are placed upon separate grounds in any respect it becomes impossible to present them for trial in the same case or to include them within the same judgment.

In Sheldon *vs.* Hinton, 6 Ills. App., 216, the general doctrine given above is referred to with approval, and the court cites as further authority the ruling of the supreme court of Missouri in McDermott *vs.* Donegan, 44 Mo., 85, where it was "held that a garnishing creditor only succeeds to the rights of his debtor, and that *whatever will defeat the latter in a suit in his own favor* to recover the debt will also be fatal to a recovery in the proceeding by garnishment.

See also Murphy *vs.* Tank Line Co., 31 Ills. App., 612.

Passing now from the decisions in Illinois to the general doctrine upon the subject, we find that while there is not in other States the uniformity which prevails in that State, nevertheless the balance of authority seems to be in favor of the principles laid down in the cases we have quoted. Thus it is said in Waples on Attachments, p. 344:

"The plaintiff virtually sues the garnishee for a debt due "the defendant; by the process of garnishment he takes the "shoes of the latter and asserts the rights which the latter has "against a third person." * * * "*Standing in the defendant's*

"*place, the plaintiff can have no greater rights than had the gar-*
"*nishee been sued by the defendant.*"

In several of the States the rule is firmly established that if the defendant *before final answer* becomes indebted to the garnishee *on any contract entered into before the garnishment*, the garnishee's right of set-off exists, and here we may perhaps emphasize again the fact that the rail contract for which appellant claims damages in this case was made nearly eight months before garnishment; that by its terms it called for performance by the St. Louis Company during the year 1884. The answer to the Chicago Company in the garnishment proceedings *was filed on the 25th of February*, 1885, and whatever may be the position of appellant as to default during July, 1884, it seems hardly possible that any real doubt can be entertained that actual and irretrievable default on the part of the St. Louis Company had taken place long before the answer of the Chicago Company was filed in the garnishment proceedings. In connection with this fact we would like to call the attention of the court to several cases which present substantially the same facts as those involved in the case at bar.

In Boston Type Co. *vs.* Mortimer, 7 Pick., 166, the garnishee, when summoned, was indebted to the defendant, *but was at the same time liable as accommodation endorser* of a note of the defendant for a large amount *which became due after the garnishment* and was protested for nonpayment and paid by the garnishee *before he made his answer.* The court held that the garnishee could set off against his indebtedness to be principal defendant the amount of the note so paid, and in giving their decision observed:

"Under these circumstances we think he cannot be held
"as trustee, for it would be against justice that he should be
"held to pay a creditor of his debtor the only money by
"which he can partially indemnify himself."

In Farmers' and Merchants' Bank against Franklin Bank, 31 Md., 404 the court, allowing a set-off which matured after action brought, said:

"There is nothing in the attachment laws in this State to "justify the conclusion that it was designed by allowing gar- "nishment to be made to place the garnishee in a worse "position in reference to the rights and credits attached "than if he had been sued by the defendant. The attach- "ing creditor seeks to have himself substituted to the rights "of his debtor as against the garnishee, and by laying his "attachment *he acquires no superior right to that of his debtor.* "The right of condemnation must therefore be subject to "any such right of set-off or discharge existing at the time "of garnishment as would be available to the garnishee if "he were sued by the defendant. Any other rule would in "many cases work gross injustice and might be subject to "great abuse." * * * "This right of set-off or discharge, "and as against the attaching creditor, should not, however, "extend to any matter originating by the action of the gar- "nishee subsequent to garnishment, as otherwise it would "be in the power of the garnishee to defeat the right of "condemnation, which should not by any means be al- "lowed."

In Machine Company against Partridge, 5 Foster (N. H.), 369, a loss occurred under a fire insurance policy, and the insurance company passed a vote to pay the loss. It appears that at the time the policy was taken out the insured had deposited with the company a premium note, and that by his contract he had undertaken to pay to the company all such sums as should be assessed against the note during the period for which the insurance was by the contract to run. After the loss upon the policy an attachment suit was brought against the insured, and the insurance company by its answer endeavored to offset *assessments which had been made upon the premium note referred to, apparently after the process of garnishment had been served.* These offsets were allowed. Upon this subject the court said:

"That trustees may retain any sums which they are entitled to receive at the hands of the principal defendant *at the date of the discovery* upon claims or contracts existing prior to action cannot admit the debt.

"It is too well settled to admit of further question that they may be allowed to retain out of funds found in their hands, an amount equal to all sums which might be properly claimed by way of set-off, *if the action were brought by the principal defendant to recover the amount of his claim against the trustees.* The rights and liabilities of trustees are not changed by the fact that the action is commenced by the creditor of the principal defendant himself. *The only object and legitimate effect of the trustee process is to enable the creditor to secure and apply to the discharge of his claim against the principal defendant such sums of money as may be found to be legally or equitably due from the trustee to the principal defendant,* or such other credits or goods of the defendant as may be found in his possession *beyond what may be due from the principal to the trustee.* In fact, a trustee is entitled to retain or to set off against the debt which he may owe the principal any item which he might set off or of which he might avail himself by any of the modes of the common or statute law if the action were brought by the defendant himself or *if the proceedings were wholly between the trustee and the principal defendant.*

"And where, in order to protect his right, it was necessary for the trustee to bring a cross-action and take judgment against the principal defendant, the court in Massachusetts granted a continuance to enable the trustee to obtain a set-off of judgments and executions.

"No doubt whatever exists that in the present case the trustees have a right to retain of the funds found in their hands sufficient to meet the amount of the several assessments made on the deposit note. That amount was an ascertained debt, as we have seen, justly due from the principal to the trustees *at the date of the disclosure* by virtue of a prior contract."

See also Caldwell *vs.* Stewart, 30 Iowa, 374.
Lannan *vs.* Walter, 149 Mass., 14.

If, in the light of the foregoing cases, we come back now to the authorities cited by counsel for appellee, their meaning

and the meaning of the phrase which is cited from the opinion of Mr. Justice Miller in Schuler against Israel, 120 U. S., 510, becomes very plain. When it is said that the garnishee can offset only such claims *as exist in his favor* against the attachment defendant *at the time of the service of the writ*, it is by no means meant to assert that the garnishee can only claim by way of set-off such claims as at that date offered a ground of action at law. The jurisdiction in equity, indeed, in matters of set-off is often based upon the fact that in those cases where equity gives relief the garnishee could not assert his claim at law. The meaning of the rule which limits the right of set-off in the garnishee to claims existing at the date of process may perhaps appear if we consider the purpose which it is sought to attain. As to that purpose we are not left in doubt. In the case of the Farmers' and Merchants' Bank *vs.* Franklin Bank, to which reference is made, it was expressly stated by the court that the garnishee was entitled to avail himself only of "such right of set-off "or discharge *existing at the time of garnishment* as would be "available to the garnishee if he were sued by the defend-"ant," and yet in this case a set-off was allowed which matured after the service of garnishment process. The explanation is found in the qualification stated by the court: "This right of set-off or discharge, as against an attaching "creditor, should not, however, extend to any matter *origi-"nated by the action of the garnishee subsequent to the garnish-"ment*, as otherwise it would be in the power of the gar-"nishee to defeat the right of condemnation, which should "not by any means be allowed." We find this distinction also emphasized in the authorities cited by counsel for appellee, where, in the additional brief, page 9, the quotation is made from Drake on Attachments that—

"No *assignment* made after that event (garnishment) can "have any effect to deprive the attachment plaintiff of his "recourse against the garnishee."

In the case at bar the contract out of which the claim of set-off arises was entered into between appellant and the St. Louis Company almost eight months before the service of the process. As a matter of fact, which we hope to show, actual default had taken place and right of action had accrued to the Chicago Company before the service of process in the garnishment proceeding, but certainly such right occurred *before the answer of the Chicago Company was filed* in the garnishment suit, and it is equally true that in either event or in any view which may be taken of the case the element of set-off which we now claim *was an existing right* within the meaning of the cases cited on the part of the Chicago Company at the time that process of garnishment was served upon it. The rule which prohibits the garnishee from defeating garnishment proceedings by voluntary action on his part, either by assignment of claims, connivance with the judgment debtor, or any other fraudulent proceeding, has no bearing whatever upon a case such as this, where *no action whatever was required on the part of the Chicago Company after service of process in order that its rights against the St. Louis Company might be fixed,* and the only question argued before this Court is whether the default *of the St. Louis Company* occurred before or after the date of garnishment.

Such a case as this seems to differ in no material respect from the case of the accommodation endorsement to which we have referred above. In that case at the time of service of process the liability of the garnishee, so far from being fixed, was absolutely conditional and indeterminate. It did not become fixed until when, *after the service of process, default had been made* in payment of the notes which had been endorsed by the garnishee and *when those notes had been protested for non-payment.* After all this had occurred and *the garnishee had paid the notes* he was permitted to put in his answer and to claim as an offset the amount so paid and this offset was allowed by the court.

If conclusive answer to the contention of appellee were

not found in the foregoing authorities, it might be found upon the evidence in this case in the fact that the indebtedness garnished in the hands of appellant was not due, as we shall show hereafter, at the time of the service of the garnishment writ.

Under circumstances such as these the proposition that the judgment when rendered related back to the date of service of process upon the garnishee loses its meaning. If the judgment were to "relate back" at all, it could not surely go further back than the maturity of the indebtedness for which it was rendered, and to that date the judgment certainly could not relate, for the indebtedness might mature on different days.

In short, the doctrine of "relation" which appellee seeks to invoke has no application to the case if understood in its usual meaning.

In view of the claim asserted by appellee that the suit prosecuted in the name of the St. Louis Company for the use of the Joliet Steel Company should be governed by different principles from those which would be applied to an action brought by the St. Louis Company for its own benefit, we would like to call the attention of the court to the fact that so far as appears from the record in this case the garnishment proceeding in question was prosecuted as much for the benefit of the St. Louis Company as it was for the Joliet Steel Company. The facts in regard to this phase of the case appear in the record as follows:

On the 21st day of July the Joliet Steel Company brought two suits in attachment against the St. Louis Company, one of them, No. 19235, claiming the sum of $7,777.07, and the other, No. 19236, claiming $10,051.78. Upon the same day the Iron Mountain Company of St. Louis also brought similar suit in attachment. The Iron Mountain Company's suit was dismissed. The second attachment suit of the Joliet Steel Company was also dismissed on the 3d of February, 1886 (Record, p. 337). In the first

suit of the Joliet Steel Company judgment was on the 13th of January 1895 rendered against the Chicago Company for the sum of $16,473.28 in favor of the ~~Joliet~~ St. Louis Company *and other creditors interested therein.* Inasmuch as the claim of the Joliet Company upon which this judgment was rendered amounted to something less than eight thousand dollars ($8,000), and as it appears that all other judgment suits brought to the same term of court have been dismissed, it seems to follow that the Joliet Company by this judgment is entitled to receive out of the judgment in controversy, if that judgment should be sustained, only the amount of its judgment against the St. Louis Company, with interest, and that the balance of the $16,000 judgment against the Chicago Company, with interest, *would represent the claim of the St. Louis Company itself.* In other words, the interests of the Joliet Company and of the St. Louis Company in prosecuting this suit against the Chicago Company appear to be about equal.

It does not seem that this state of affairs is at all changed by the fact that Mr. David K. Ferguson has become the purchaser of the judgment against the Chicago Company, for, in the first place, as he is admittedly a purchaser *pendente lite,* his speculation can have no bearing upon the legal aspect of the case; and, further than this, it does not appear that his purchase is of anything more than the interest of the Joliet Company. The interest of the St. Louis Company appears to remain. (See Record, p. 246.)

II.

At the Date of the Service of the Garnishment Writ upon the Chicago Company That Company had a Valid and Subsisting Cause of Action against the St. Louis Company for Damages for Breach of the Rail Contract.

The garnishment suit in which was rendered the judgment against which we seek in this proceeding the allowance of an equitable offset was brought under the provisions of the Illinois statute allowing garnishment of debts not due.

The suit in question was begun on July 21st, 1884, and appellant was garnished on the same day. The indebtedness for which judgment was rendered in this case was an indebtedness which was not due at that time and did not mature until the 15th of August, nearly a month after service of the writ of garnishment upon appellant.

It appears from the record (pages 144, 268, 269) that by the terms of the ore contract between the St. Louis Company and the Chicago Company the shipments during each month were to be settled for on the 15th of the following month. Some of the pig-iron was to be paid for on the same terms, while part of it was to be paid for in cash on delivery. (Record, pp. 299, 267.)

It appears from the record that when the writ of garnishment in this case was served the indebtedness of the Chicago Company to the St. Louis Company actually due and payable for pig-iron was much more than balanced by the indebtedness actually due and payable by the St. Louis Company to the Chicago Company for steel rails. These items of set-off have been allowed in the action at law and are now out of the case.

The judgment that was rendered against the Chicago

Company represented an indebtedness for ore delivered during July, 1884, which was not due at the time of garnishment and did not mature until the 15th of August. (Record, pp. 261, 268, 269.)

As a matter of fact, all claims of set-off made by appellant and which were liquidated in amount were allowed in the action at law.

It is only as to the unliquidated set-off that appellant was denied relief at law and was compelled to go into equity.

By the answer of the Joliet Steel Company filed in the equity case three issues were tendered as to the subject of the maturity of appellant's claims for damages:

1. That the St. Louis Company had not made default in the performance of the rail contract before the service of process in the garnishment suit.

2. That the St. Louis Company had not made default in performance of the ~~rail~~ contract before the 15th of August, 1884, when the debt of appellant to it matured.

3. That the St. Louis Company did not make default in performance of that contract at any time.

In this Court the last two issues thus tendered appear to be practically abandoned and the first alone is seriously urged.

In considering the questions which counsel presents, we may perhaps start out with the fact that inasmuch as the St. Louis Company did not perform its part of the rail contract at any time after July 1st, 1884, it did make default therein at some time.

Furthermore, inasmuch as, by the passage of the month of July without performance by the St. Louis Company, all possibility of performance of this contract ceased, as will be hereafter shown, it appears that default must have occurred

before the maturity of the indebtedness from the Chicago Company to the St. Louis Company.

This is recognized by counsel for appellee when he lays his emphasis in this Court upon the establishment of the first issue alone and claims that default did not occur on the 10th day of July.

That default by the St. Louis Company in performance of the rail contract occurred by or before the 10th of August is substantially conceded in the "Additional Brief," at page 21, where it is claimed that "there could be no breach of "the contract for July deliveries unless default was made, "not only in furnishing cars to receive them in July, but in "paying for them on August 10th."

This might perhaps be true if the first act looking to July deliveries were under the contract to be performed by the Chicago Company. Unfortunately for the argument the contract required the first act to be performed by the St. Louis Company. The rails which the Chicago Company agreed to make were to be of such weights per lineal yard and of such templet as the St. Louis Company might specify.

Until these specifications had been received the Chicago Company could do nothing, and no specifications were given, as required by the contract, during July.

To the three issues tendered by the Joliet Company, as above stated, our answer is threefold:

1. That if default was made by the St. Louis Company at any time before the suit in equity was brought by appellant the offset will be allowed in equity.

If we have succeeded in showing that the attaching creditor stands, so far as concerns the garnishee, in the shoes of the attachment debtor this proposition is established with it.

2. That if default was made by the St. Louis Company at any time before August 15th our set-off should be allowed.

This is merely to apply the same rule to both appellee

and appellant. If the Joliet Company garnish a fund due August 15th it must, by the strictest letter of appellee's argument, take it subject to the set-off which exists on August 15th.

3. We insist that default was made by the St. Louis Company on the 10th of July, 1884.

By the rail contract between the St. Louis Company and the Chicago Company the Chicago Company agreed to sell and the St. Louis Company to buy eighteen thousand tons of steel rails, to be delivered in monthly installments during the year 1884 of about 1,500 tons per month, rails to be made by the Chicago Company of such weights per lineal yard, and having such templet as should be specified in advance by the St. Louis Company. Settlement to be made by the St. Louis Company upon the 10th of each month succeeding the month of delivery at the rate of thirty-five dollars per ton; delivery to be made f. o. b. cars at the works of the seller in Chicago. It was further agreed that in certain specified contingencies the seller should not be held strictly to the time of delivery named in the contract, but should deliver as soon as possible thereafter. There is no provision that delay in payment by the purchaser beyond the time contracted should be excused, and the absence of such a stipulation, in view of the express provisions of the contract in favor of the Chicago Company, is at least significant. On the 10th of July the St. Louis Company was indebted to the Chicago Company in the sum of over $21,000. On the 11th of July, 1884, the president of the St. Louis Company wrote to the Chicago Company to say that the St. Louis Company was not enabled to send a remittance, as should have been done on that day for the June rail account, and asking as a special favor that the matter might rest for a little while, inasmuch as the Chicago Company had in its possession funds belonging to the St. Louis Company from pig metal shipped to the Chicago Company

and also from the July ore which was arriving for the account of the St. Louis Company. Much regret was expressed by the president of the St. Louis Company that such a letter should have been necessary (Record, p. 160). At this time the St. Louis Company did not claim from the Chicago Company an indebtedness of much more than $17,000, so that even upon the basis suggested by this letter there was on the 10th of July a default by the St. Louis Company to the extent of something over $4,000. It appears further that of the July ~~ore~~ metal to which this letter refers as shipped on account of the St. Louis Company, some thirty-six car-loads, shipped July 5th, had been pledged to the Boatman's Bank of St. Louis to secure an indebtedness of $7,500.

In the additional brief filed by counsel for appellee some criticism is made of the position of appellant in urging upon the court the matter of this pledge to the Boatman's Bank of St. Louis, and reference is made to the fact that when the legal offsets were finally allowed in the garnishment proceedings no allowance was made for this claim. It is probably true, as this fact would suggest, that the matter of the pledge to the Boatman's bank was subsequently adjusted between the receiver of the St. Louis Company and the Boatman's bank, but whether this was done or not can hardly affect the proposition that *on the 10th of July*, when default occurred, this property was pledged to the Boatman's bank; the indebtedness of the Chicago Company to the St. Louis Company was reduced by that amount, and the default of the St. Louis company was by the same figure increased to over $11,000; nor is this the whole extent of the default shown on the part of the St. Louis Company on that date. It appears that the St. Louis Company was indebted to the Chicago Company in the sum of $458.66 rebate on quality of ore and over $6,000 for freight paid for the account of the St. Louis Company upon ore shipped before the 21st of July, so that in any view that may be taken the default of the St. Louis Company on the 10th of July amounted to

a very considerable sum more than $11,000. It appears, too, that no specifications were transmitted to the Chicago Company at any time in order to enable it to roll rails for shipments during the month of July, so that aside from the default in payment to which reference has been made the St. Louis Company had put it out of its power to conform to a contract by which it undertook to receive 18,000 tons of rails during the year 1884 *in monthly instalments of about* 1,500 *tons.*

Furthermore, the St. Louis Company had become insolvent and was, for this additional reason, *disabled:* was notoriously incapable of fulfilling its contract obligations. It is urged upon the Court that the Chicago Company made no formal rescission of the steel-rail contract. No formal rescission is necessary where both parties treat the contract as ended for the reason that it has become impossible of performance. No formal notification of notorious facts was necessary. The acts of the parties declared the situation more strongly than can be done in any form of language.

The facts which thus stand out are the disability of the St. Louis Company, by reason of its insolvency and its actual breach of contract, by which, in the limited period of time remaining, throughout the year 1884 it disabled itself from receiving the monthly installment of rails according to the contract. Such breach as this goes to the substance of the whole contract.

Norrington *vs.* Wright, 115 U. S., 188.

The argument urged by counsel for appellee that complete failure on the part of the St. Louis Company to carry out the contract does not of itself constitute default, but that there must be repudiation on the part of the St. Louis Company, or else a tender on the part of the Chicago Company of the goods sold under the contract and ~~the~~ express refusal on the part of the St. Louis Company to receive the same, finds its answer in the terms of the contract. By that

contract the rails which were to be delivered by the Chicago Company were to be rolled by it upon specifications transmitted by the St. Louis Company. In the absence of such specifications no rails could be rolled or tendered by the Chicago Company, and the omissions of the St. Louis Company in this respect would lie at the basis of the default.

Some effort is made by counsel for appellee in his additional brief to criticise the method of computation of damages by appellant. Upon this branch of the argument no authority is cited and we are referred to no principle which condemns the method employed. A sufficient answer to the argument on this point is, however, to be found in the fact that no objection such as it is now sought to urge was raised in the court below. It is too late now to raise such questions for the first time.

In conclusion, replying solely to the additional brief of appellee, we submit to the court:

1. That appellant is not deprived of its equitable set-off by the mere fact that the suit against it was brought by the St. Louis Company in the course of garnishment proceedings, and that the proceeds would go to a creditor.

2. That the judgment which appellant seeks to enjoin was as to a large part, in fact as well as in form, for the benefit of the St. Louis Company, and that as to this part the argument of appellee does not apply.

3. That the indebtedness garnished by appellee was not due at the time of garnishment, and that by the very admissions of appellee's argument appellant is entitled to offset against the sum so impounded all claims existing at the time that debt became due. Appellant's claim for damages had surely accrued by August 10, 1884.

4. That default in performance of the rail contract by the St. Louis Company took place and appellant's claim for damages accrued July 10, 1884, before the service of the writ of garnishment.

CHARLES S. HOLT,
E. PARMALEE PRENTICE,
Of Counsel for Appellant.